

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*  
UNITED STATES OF AMERICA \*  
v. \* 14-cr-93-01-LM  
ALKIS NAKOS \* August 24, 2015  
\* 8:05 a.m.  
\* \* \* \* \*

Day 5 - Morning Session  
TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY  
and a jury

Appearances:

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1                   I N D E X  
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Chambers conference, page 3

6                   WITNESS:                DIRECT            CROSS            REDIRECT            RECROSS

7                   JAMES R. NORRIS

8                   By Ms. Ollila            32                                      130  
9                   By Mr. Sheketoff         88                                      13510  
11                   EXHIBITS:                ID.            Evid.

12	Government's Exhibit 41KK-6	75
13	Government's Exhibit 41JJ-2	76
14	Government's Exhibit 41JJ-1	77
15	Government's Exhibit 41JJ-3	78
16	Government's Exhibit 41JJ-4	78
17	Government's Exhibit 41KK-1	79
18	Government's Exhibit 41KK-2	79
19	Government's Exhibit 41KK-7	80
	Government's Exhibit 41KK-5	81
	Government's Exhibit 41KK-3	81
	Government's Exhibit 41KK-4	82
	Government's Exhibit 41KK-8	83
	Government's Exhibit 41LL-2	85
	Government's Exhibit 41LL-3	86

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## 1 IN CHAMBERS

2 THE COURT: All right. We are on the record  
3 on Monday morning just to have what would probably be a  
4 penultimate charging conference. We've had a couple of  
5 conversations and counsel have reviewed my prior draft.  
6 And now I just want to go over these most latest  
7 instructions and make sure that all arguments are on the  
8 record and that I have enough time to draft them finally  
9 before we get to the close of the case.

10 So first question I have to ask -- and this  
11 came up this weekend as I was drafting and editing and  
12 making the final changes, and I looked through the  
13 government's proposed instructions. There is no request  
14 in there for any lesser included plain vanilla  
15 conspiracy.

16 MS. OLLILA: Right.

17 THE COURT: So it's an all or nothing. You  
18 want a thousand --

19 MS. OLLILA: Yes.

20 THE COURT: That makes sense with the way the  
21 case is tried.

22 MS. OLLILA: Right.

23 THE COURT: You're not requesting any lesser  
24 included plain vanilla conspiracy; i.e., if the jury  
25 does not find the quantity alleged but finds some lesser

1 quantity.

2 MS. OLLILA: Well, that was included -- you  
3 have a special verdict.

4 THE COURT: That was confusing. Because you  
5 hadn't requested it, I had included it in the special  
6 verdict form the first draft I gave you.

7 MS. OLLILA: Oh, sure, sure.

8 THE COURT: But, frankly, it was nothing that  
9 had been requested by counsel. So I removed it because,  
10 frankly, the conspiracy as charged is conspiracy at  
11 large, greater than a thousand kilograms of pot and  
12 MDMA. Reasonably foreseeable to this defendant, a  
13 thousand kilograms or greater. And if the jury in this  
14 case doesn't buy the tractor-trailers and the quantity,  
15 they aren't buying much of anything. So ultimately my  
16 question to the government is do you want a lesser  
17 included.

18 MS. OLLILA: Yes, Judge. And when you were  
19 talking about a lesser included, I wasn't understanding  
20 that you were referring to the special verdict. You may  
21 remember at the final pretrial, when we were talking  
22 about jury instructions, you were saying you wanted them  
23 a week in advance, and I had given some thought to  
24 having a special verdict form with respect to the series  
25 of three, and at the same time we were talking about the

1 special verdict with respect to the weight. So I think  
2 that is absolutely necessary in any conspiracy case  
3 that, if the jury doesn't find over a thousand kilos,  
4 they've got to find something less. So it goes zero to  
5 a hundred, hundred to a thousand, thousand or more.

6 THE COURT: Okay. That wasn't in the original  
7 proposed instructions. So I reworked these this weekend  
8 with it in mind that this was an all or nothing, that  
9 the government was requesting an all or nothing  
10 conspiracy.

11 MS. OLLILA: No, I wasn't, Judge, and when I  
12 saw your instructions --

13 THE COURT: My first draft?

14 MS. OLLILA: Right. I didn't assume that that  
15 would be taken out because we never discussed taking it  
16 out when we were talking about objections.

17 THE COURT: You are correct. I did it this  
18 weekend because it wasn't consistent with the other  
19 elements that were requested. I want to make sure  
20 Attorney Sheketoff weighs in on this as well.

21 MR. SHEKETOFF: Well, I actually have a case  
22 that I've argued to the First Circuit that I'm awaiting  
23 a decision on where I argued that a lesser included  
24 offense -- that one wasn't a conspiracy, but it was  
25 possession with intent to distribute -- was required if

1 any rational juror could come to that conclusion.

2 So I think the case law is that one of the  
3 parties has to request it, but I think it would be  
4 better case law to say, if any rational jury could  
5 conclude it, then the Court should give it whether the  
6 parties want to go all or nothing or not. In other  
7 words, I think if a rational jury could reach that  
8 verdict, they should be instructed on it no matter how  
9 much the parties want to gamble.

10 THE COURT: Right. Then this is how I would  
11 envision my new draft coming out. This is on Count 2,  
12 the conspiracy. You're going to have to understand that  
13 I need to now rework it based on this. So what I would  
14 understand being the best way to handle this for a jury  
15 would be as follows. Instruct them on the plain vanilla  
16 conspiracy, it's illegal to agree, to sell or possess  
17 with intent to sell any amount of controlled substances.  
18 Plain vanilla.

19 MS. OLLILA: Right.

20 THE COURT: And then explain to the jury that  
21 a special verdict form is going to them and explain the  
22 special verdict form and that they have various  
23 questions they need to answer. And I would include in  
24 that special verdict form then a finding beyond a  
25 reasonable doubt of quantity as one option, conspiracy

1 at large. Okay? And a separate finding beyond a  
2 reasonable doubt that this defendant -- it was  
3 reasonably foreseeable to this defendant that the  
4 conspiracy involved that amount. And then, if not, what  
5 quantities do you find, and give them essentially the  
6 quantities that they can check off. So that's how I  
7 would envision Count 2.

8 MS. OLLILA: The first draft. And, Judge, you  
9 had said that I didn't request it, but I'm looking at my  
10 jury instructions and the very last page of the special  
11 verdict that included that does have all of the --

12 THE COURT: Okay. As I was reading through  
13 everything this weekend, I did not see that.

14 MS. OLLILA: I'm sorry, Judge.

15 THE COURT: That's okay. I can rework that,  
16 put the plain vanilla conspiracy in there, and then the  
17 quantities in addition.

18 So Count 2 will look different and it will be  
19 consistent with what I just described, and I will get  
20 you a draft of that. And I will add obviously to the  
21 special verdict form the extra quantity findings and  
22 questions.

23 All right. So that issue -- now that I'm  
24 clear on that.

25 MS. OLLILA: Sorry about that, Judge.

1                   THE COURT: That's okay. I made all the  
2 stylistic changes requested by Attorney Sheketoff. I  
3 have not come up with, as you described it, a heftier  
4 reasonable doubt instruction. So I'm hoping that you  
5 can propose one to me this morning.

6                   MR. SHEKETOFF: Yes. And I apologize for not  
7 making it to the office this weekend because that was  
8 one of the two things I wanted to do at the office. The  
9 other was read my mail.

10                  THE COURT: Well, we still have time for that.  
11 You can submit that at our final charging conference,  
12 and maybe I can find one as well.

13                  Okay. Major changes then, my major changes  
14 frankly were to give you that fifth element, but now  
15 that we are doing it in the special verdict form, the  
16 aggravated crime of conspiracy --

17                  MS. OLLILA: Doesn't in and of itself prove  
18 that. It's a special verdict. You're right.

19                  THE COURT: Exactly. So I had restructured  
20 everything and added that fifth element that you had  
21 requested, but now I think that just moves to a special  
22 verdict form. And I will make sure in the special  
23 verdict form indicating, you know, they need to find  
24 this beyond a reasonable doubt, that it was reasonably  
25 foreseeable to him, and I will explain it in the special

1 verdict form.

2 MS. OLLILA: Good, good, good.

3 THE COURT: I don't know if you saw the  
4 conspiracy case that came out Friday from the First  
5 Circuit. That was one of the issues.

6 MS. OLLILA: No. Okay. So what did it say,  
7 Judge?

8 THE COURT: The question in that case was  
9 whether or not it was really clear to the jury that they  
10 had to make that quantity and reasonable foreseeability  
11 finding beyond a reasonable doubt. It was just in the  
12 special verdict form, didn't contain any -- as I recall,  
13 didn't contain any specific language, but of course  
14 throughout the instructions the jury had been told  
15 beyond a reasonable doubt, and so the Court found that  
16 it was -- that if there was any error, it was harmless.

17 MS. OLLILA: Harmless.

18 THE COURT: Correct. That the jury  
19 instructions as a whole made it clear. So I will make  
20 it clear and we won't have that issue.

21 Okay. I have also added -- because the  
22 indictment charges distribution and possession with  
23 intent to distribute in Count 2 and its conjunctive,  
24 I've added a paragraph. You don't have to find that  
25 there were both types. Either/or is sufficient. Okay?

1 I'm preempting the question, what if we find there was  
2 distribution but no possession with intent to distribute  
3 or vice versa.

4 MR. SHEKETOFF: So I have a client that wrote  
5 to the First Circuit saying these are the issues I want  
6 my lawyer to raise. This is before I filed my brief,  
7 and one of the issues he wanted me to raise, and  
8 therefore I did, was if you charge possession with  
9 intent to distribute and distribution.

10 Since the First Circuit, unlike some other  
11 circuits, says these are completely distinct and  
12 separate crimes, do the quantity allegations have to go  
13 to both. In other words, you can't aggregate possession  
14 -- well, he possessed with intent to distribute  
15 500 kilograms, but he distributed 500 kilograms. That  
16 doesn't add up. That may be a thousand, but it  
17 doesn't -- it can't be. It has to be -- one or the  
18 other has to at least have been a thousand because  
19 they're separate crimes.

20 MS. OLLILA: But if you distribute in excess  
21 of a thousand, you've obviously possessed with intent to  
22 distribute. So as long as you distribute.

23 MR. SHEKETOFF: Not necessarily.

24 MS. OLLILA: How? If you distribute, how can  
25 you not possess with intent?

1                   MR. SHEKETOFF: You can be an aider and  
2 abettor and never have possession of it yourself. So  
3 the First Circuit has law that these are distinct and  
4 separate crimes. And so my client found that somewhere  
5 with some jailhouse lawyer I think and --

6                   THE COURT: Came up with a creative argument.

7                   MR. SHEKETOFF: So I argued that, I mean, in a  
8 brief to the First Circuit. Saved my rights on that  
9 one.

10                  THE COURT: So I have added that paragraph.  
11 It's at pages 18 to 19 if you are looking at the draft  
12 now. Obviously that's going to change as I rewrite the  
13 conspiracy.

14                  I think the same thing goes for the  
15 conjunctive with respect to MDMA and pot because if the  
16 jury comes in with a question, well, what if we find  
17 there was no MDMA. I'm going to look for law on that.  
18 I found one Eighth Circuit law very clearly allows it,  
19 one or the other. So I'm looking into that. I haven't  
20 added it yet. But I'm just preempting a question.

21                  MR. SHEKETOFF: So I think there is some  
22 tension in the law. I think the law is basically as you  
23 said, your Honor. There's case law out there that says  
24 you charge two separate drugs. You prove one of them.  
25 You've proved the conspiracy charged in the indictment,

1 or at least close enough. It's not a big enough  
2 constructive amendment that it means anything.

3                 But there's this other set of concepts out  
4 there that you have to prove the conspiracy that you  
5 charged. And there's some tension between these two  
6 concepts. So I'm going to take the legal position. I'm  
7 not pretending the case law is in my favor on this. I  
8 don't think it is. But I'm going to take the legal  
9 position that if you throw something in there like  
10 Molly, in order for the conspiracy that you prove to be  
11 substantially similar to the conspiracy that you  
12 charged, you have to do that, too. So I'm going to save  
13 my rights on that.

14                 THE COURT: All right. Noting your objection,  
15 and obviously it's preserved now, I am going to look for  
16 language, probably a very short couple of sentences, to  
17 explain to the jury that it's not required that they --  
18 even though it's charged with an "and," it would be  
19 illegal for anyone to conspire to distribute, possess  
20 with intent to distribute that amount of marijuana or  
21 any amount of marijuana, whether or not the Molly was  
22 part of that conspiracy.

23                 I understand your argument. They have charged  
24 MDMA and pot and they're stuck with that, but I'm going  
25 to look for an instruction that will explain to the jury

1 that it's not required that they find both.

2 I added -- and this one you will want to be  
3 heard on. I have researched the question of whether or  
4 not aiding and abetting the distribution, possession  
5 with intent to distribute can --

6 MS. OLLILA: Act as a series of violations.

7 THE COURT: Yes, for the element in the CCE  
8 charge of the continuing series of violations. And the  
9 law is fairly strong and clear on that, that aiding and  
10 abetting can, in fact, act as a source for those  
11 violations.

12 So my aiding and abetting instruction in the  
13 current draft is at page 25, and I know your objection  
14 to that and a larger objection, so I will let you make  
15 that, Attorney Sheketoff. Let me just finish going  
16 through the changes that I've made since our last  
17 meeting.

18 I added a stipulation paragraph just to  
19 explain the stipulation. That's at page 12 right now.

20 I deleted the instruction regarding you've  
21 heard evidence that the defendant has been convicted of  
22 a crime. And it was an instruction in bold and it was  
23 there just in case the defendant would testify. I've  
24 taken it out just so that -- I can put it back in, if  
25 necessary, but I've taken it out for now. So that's

1 deleted presuming he does not testify. And I have  
2 obviously an instruction about his right not to testify.

3                 Okay. I think I've gone over the things that  
4 I've added. Let's go to the bigger questions in the  
5 defendant's Rule 29 ex parte motion, Document No. 179.  
6 It's now been unsealed. And the first argument is that  
7 Count 2 fails to allege the element of the aggravated  
8 conspiracy that has been charged with respect to the  
9 quantity being in excess of a thousand kilograms. And I  
10 will let Mr. Sheketoff make his argument. Go ahead.

11                 MR. SHEKETOFF: I don't have much more to say  
12 than I put in the papers, your Honor, but my basic  
13 theory is this. That after Alleyne, minimum mandatories  
14 are considered aggravated crimes. You're entitled to a  
15 grand jury indictment on that crime and to some sort of  
16 notice I guess it is. And the way the government has  
17 charged that crime is the way we used to do it  
18 pre-Alleyne. Where they have definitely made a charge  
19 of a thousand kilos, that would raise the maximum  
20 penalty, but since the element required to raise the  
21 minimum is that you personally were involved with it or  
22 it was reasonably foreseeable to you. And I know in  
23 Massachusetts that's how they charge it now. I  
24 assumed -- and it's only an assumption -- that main  
25 justice told them this is how you charge it now.

1           But in any event it's not in there, and I know  
2 because we've had an unrecorded lobby conference that  
3 you talked about actual notice from the entire  
4 indictment. But my position is it's not in there, and  
5 since it's not in there, the grand jury didn't act on  
6 it, and, therefore, there is no minimum mandatory  
7 charged in Count 2. So the jury shouldn't be instructed  
8 about that. And the government's not entitled to that  
9 if they get a conviction to a sentencing hearing where  
10 they can argue that there's a minimum mand. It still  
11 charges a crime. It charges a serious crime, but it  
12 doesn't charge a minimum mandatory aggravated  
13 conspiracy.

14           THE COURT: Go ahead, Attorney Ollila.

15           MS. OLLILA: I think, just briefly, Judge, the  
16 case law is clear that you will read the indictment as a  
17 whole, and I think, if you read the indictment as a  
18 whole, the United States more than sufficiently charged  
19 the minimum mandatory quantity and so therefore the  
20 count survives.

21           THE COURT: I think best practices would be to  
22 include that element. There is no question but that  
23 after Alleyne that Attorney Sheketoff is correct. It  
24 should be included as an element in the indictment. I  
25 would put Alleyne and Apprendi together when I say that.

1                 However, at this stage we are deep into the  
2 trial, and I have to look at the question of has this  
3 defendant received notice of this charge. And I see two  
4 issues really. Notice to the defendant at this point,  
5 and, secondly, I think Alleyne clearly requires a jury  
6 finding beyond a reasonable doubt on that particular  
7 element that Mr. Sheketoff is describing with respect to  
8 the aggravated crime of conspiracy with respect to a  
9 specific quantity.

10               On the noticed question, looking at the  
11 indictment as a whole, there can be no question but that  
12 the defendant is on notice that the government believes  
13 that it is reasonably foreseeable to him that the  
14 conspiracy at large would involve a quantity of cocaine  
15 in excess -- marijuana in excess of a thousand  
16 kilograms. Because that specific amount is charged in  
17 the indictment, Count 2, Count 1 places the defendant at  
18 the top of that alleged conspiracy. And so I believe  
19 there are no notice problems. In fact, I think Count 1  
20 is the 10,000-pound gorilla version of notice to a  
21 defendant that he is being charged with the aggravated  
22 crime.

23               So I don't see any notice problems with  
24 respect to the indictment as a whole, and I can cure the  
25 failure to include the element by requiring that the

1 jury find that element beyond a reasonable doubt in my  
2 instructions. So that's my ruling with respect to that  
3 argument.

4 MR. SHEKETOFF: And not to quarrel with your  
5 ruling, your Honor, but my rejoinder would be that you  
6 can be guilty of a CCE even if you are a minor manager.  
7 You don't have to be the head of the organization to be  
8 guilty of a CCE. You could be -- I don't know. Who do  
9 we have in this case. You could be Fowle -- we haven't  
10 heard from him yet -- who is involved in a series of  
11 these things and manages one other person directly and  
12 knows about a whole bunch of other people. In any  
13 event, that's my rejoinder.

14 THE COURT: Okay. I think that's a good  
15 point. And just to clarify, the CCE charge coupled  
16 with -- Count 1 coupled with Count 2 I believe is  
17 sufficient to place this defendant on notice that he's  
18 being charged with the aggravated conspiracy. But I  
19 think you make a good point.

20 With respect to the missing element number one  
21 in the CCE charge, I want you to go ahead.

22 MR. SHEKETOFF: Okay. So on Count 1, your  
23 Honor, this is totally a creature of statute. I guess  
24 most of our crimes are. And the statute lays out two  
25 elements. Element one is that there's basically a drug

1 violation that's a felony. And then element two has a  
2 whole bunch of things with it. One of them is that that  
3 particular element one is part of a series, etc. So  
4 they just leave out in Count 1 element one. It's gone.  
5 It doesn't exist. They say everything that they're  
6 required to say about element two, which has multiple  
7 parts, but it's not in it.

8                   So, again, because we have the unrecorded  
9 lobby, you told us that your view was that the  
10 indictment as a whole tells you that Count 2 is what's  
11 in Count 1, and my rejoinder is just that it's not  
12 there. You know, it has to be there.

13                  THE COURT: Go ahead, Attorney Ollila.

14                  MS. OLLILA: And I think Attorney Sheketoff  
15 has articulated what the United States's position is.  
16 That Count 2 makes it clear that that is the predicate  
17 that the United States is relying on, and so that is  
18 more than enough to sustain the indictment as a whole.

19                  THE COURT: I think, best practices again,  
20 would be for that element to be expressly included and a  
21 continuing criminal enterprise charged, that it  
22 expressly incorporates Count 2. However, in this case I  
23 do find that the indictment as a whole is sufficient to  
24 place this defendant on notice of the charged crime and  
25 that that element is frankly charged and described in

1 Count 2.

2 Your other argument with respect to the  
3 continuous series of violations.

4 MR. SHEKETOFF: Right, your Honor. As we went  
5 along in the trial, it occurs to me that -- with your  
6 help, it occurs to me that there are other things one  
7 could say about Count 1, the second element, which has  
8 many parts to it, including the series, which all the  
9 case law says -- I think there's a Supreme Court case on  
10 it that says the series, each individual series, has to  
11 be found by the jury unanimously beyond a reasonable  
12 doubt. It wouldn't do any good for six jurors to think  
13 one, two, and three are the series and for another six  
14 jurors to think, no, three, four, and five are the  
15 series. There's some case law about this, the  
16 difference between what's an element and what's a means  
17 to accomplish that element. And I think even the  
18 Supreme Court suggests that the distinction is not  
19 always that clear.

20 So I want to take the position, your Honor,  
21 that the series has to be somewhere in the indictment.  
22 What is it that we are choosing from?

23 Just like in a RICO charge. This is only my  
24 second CCE in a career that's gone on for way too long  
25 I'm sure, but I've had many RICO cases. And in RICO

1 cases they articulate what the predicate acts are. They  
2 spell out each and every one.

3 And I'm not sure, as we are about to finish  
4 the government's evidence in this case, which predicate  
5 acts are in there. And if you're going to articulate to  
6 them any specific predicate acts, because some of the  
7 acts that we have heard about may be tied to the  
8 Canadian larger conspiracy in some sense, it's not clear  
9 to me that my client would have even known about those  
10 in any way, shape, manner, or form.

11 So I'm taking the position that the failure to  
12 say in Count 1 what the potential acts are that could  
13 form the series is a constitutional violation, just like  
14 not saying what -- that there's that element one. And  
15 if you look at the whole indictment, you can't figure  
16 this out from the whole indictment.

17 And at my client's suggestion, I'm also going  
18 to take the position that you have to name the five  
19 people. I mean, you may not have to prove all five  
20 because you could name ten, you know. So I'm going to  
21 take the same position with the people that he  
22 supposedly supervised, that they have to be named or  
23 described in some form or fashion, and the jury has to  
24 be told to unanimously -- they have to agree unanimously  
25 on the five. I don't think the case law supports me on

1 that, unlike the series, but I don't see a distinction.  
2 If you have to prove that you supervise five people, it  
3 seems to me you should be able to tell me who they are.

4 THE COURT: All right. Just to deal with the  
5 last issue first. The case law is clear that the jury  
6 does not have to be unanimous about the named -- any  
7 specific five individuals. They do have to be  
8 unanimous, however, that there were at least five.

9 With respect to the continuing series of  
10 violations, let me just say that there is support for  
11 the argument you are making in a First Circuit case,  
12 which I just called up on my computer so I could read it  
13 to you. It's Soto Beniquez. And let me just read from  
14 this decision. I'm going to say that this decision gave  
15 me pause, but it also is internally -- at least in my  
16 opinion, internally consistent. I'm just going to go  
17 over that with you now on the record and then point out  
18 that the Federal Jury Instructions is the source that  
19 I'm ultimately relying on to make sense of the language  
20 in this case.

21 But let me just read from Soto Beniquez.  
22 Quote, we think it preferable for predicate offenses to  
23 be alleged in the CCE count, but at least where the CCE  
24 count incorporates by reference predicate offenses  
25 charged elsewhere in the indictment, failure to list

1 predicate offenses in the CCE count itself is not  
2 reversible error because the defendant has been provided  
3 fair notice.

4           Then I'm going on down through the decision,  
5 and it appears to support your argument, Attorney  
6 Sheketoff. It then goes on to point out -- let me just  
7 read because this is the defendant's argument in Soto  
8 Beniquez. Defendants also argue that in the indictment  
9 the predicate offenses for the CCE charge were based on  
10 the conspiracy count, but at trial the government used  
11 evidence of uncharged narcotics offenses to establish  
12 the predicate offenses. Thus, defendants argue,  
13 although the CCE charge remain the same, the facts used  
14 to prove the series elements of the charge were  
15 different from those set forth in the indictment.

16           Slightly different than the argument you are  
17 making. But as you go down to the ultimate conclusion,  
18 the Court writes, and I quote, here defendants were not  
19 prejudiced. The indictment charged them with violations  
20 of narcotics laws from January 1990 to March 1994. The  
21 use of narcotics offenses in that time period should  
22 have been no surprise to them.

23           So reading Soto Beniquez, I certainly -- I  
24 think as a prosecutor I would include those details in  
25 my indictment just because Soto Beniquez seems to

1 suggest that that is critical.

2           When I read, however, through the case law  
3 throughout the circuits as compiled in the Federal Jury  
4 Instructions treatise, I find fair clarity that courts  
5 across the country are allowing allegations in the  
6 indictment as a whole to fulfill the defect of which you  
7 have -- to which you've objected.

8           Let me just -- I can go right to the  
9 conclusion. Let me just read from it. Because we are  
10 talking now -- I'm talking about the treatise, and it's  
11 the Model Jury Instruction 56-28, second element,  
12 continuing series of violations.

13           So this instruction itself indicates to the  
14 jury as written here, these violations do not have to be  
15 convictions or separate counts in the indictment. They  
16 may be overt acts charged in the conspiracy count of the  
17 indictment or even acts not mentioned in the indictment  
18 at all as long as the defendant had the intent to  
19 violate the narcotics laws when he committed these acts.  
20 It goes on in the comment to that instruction and I will  
21 just read one sentence, the concluding sentence.

22           Consequently, the predicate narcotic offenses  
23 needed to satisfy the second element need not be charged  
24 in separate counts in a Section 848 indictment.

25           The next paragraph of that comment is: It is

1 sufficient to charge the alleged series as overt acts in  
2 the conspiracy count that usually is the first count in  
3 such indictments, and it has even been indicated that  
4 the predicate violations need not be charged in the  
5 indictment at all if the evidence at trial discloses at  
6 least three other narcotics violations not specifically  
7 named in the indictment.

8                 The treatise authors go on to criticize the  
9 wisdom of that but note that this is the apparent  
10 majority approach to CCE -- the second element of CCE  
11 charges.

12                 I am going to follow the majority approach.  
13 Your objection is duly noted. And as we get to our  
14 final charging instructions, I think we can discuss the  
15 issue further of the three predicate violations because  
16 the jury -- you are correct. The jury absolutely must  
17 find those three unanimously and beyond a reasonable  
18 doubt, which I will tell them. So we can discuss that  
19 at our final charging conference.

20                 MR. SHEKETOFF: All right. And, your Honor,  
21 just as a general question, if you've saved my rights at  
22 the charging conference, do I have to object at the end  
23 of the charge and go over these with you again?

24                 THE COURT: You mean after I finish formally  
25 charging the jury?

1                   MR. SHEKETOFF: Yes.

2                   THE COURT: All your objections in my view of  
3 things are preserved as long as you've made them along  
4 the way. I've heard them and I've been able to either  
5 accept those or reject them on the record.

6                   MR. SHEKETOFF: And I agree with you. That is  
7 the majority view. There's no question about it. I  
8 just think it's wrong.

9                   THE COURT: As does, I think, the treatise  
10 authors, and there's some indication that the First  
11 Circuit may look at this very closely as well.

12                  But at this point I don't have enough in front  
13 of me. I have the majority rule and it's fairly  
14 persuasive that courts have gone ahead and allowed an  
15 indictment such as this to go forward.

16                  MR. SHEKETOFF: I understand. And, in fact,  
17 the only way the government can save its rights on this  
18 is for you to take the position it's denied, and if I  
19 lose the trial, then I get to litigate it. Otherwise  
20 the government is just out of the box on it. So I  
21 understand.

22                  THE COURT: A couple of other issues. Are  
23 there other jury instructions, questions of law that we  
24 need to cover now, at least at this penultimate -- I  
25 want you to understand we'll have one last on the

1 record.

2 MS. OLLILA: No, I have nothing, Judge.

3 MR. SHEKETOFF: I don't either.

4 THE COURT: I will rework that conspiracy. It  
5 will be simpler actually because the plain vanilla  
6 conspiracy elements are very -- yes. And so then it  
7 will describe that count to them, and then I will  
8 explain the aggravated crimes. I won't use that  
9 language, but in the special verdict section of my jury  
10 instructions, and then of course the special verdict  
11 form will be consistent with that. As soon as I get  
12 that drafted, I will try to put that in bold so you can  
13 immediately -- your attention is drawn to it and you can  
14 review that tonight, if not sooner.

15 A couple of other minor things. At a point --  
16 and I don't recall specifically. Testimony was -- and  
17 it was not objected to, about Andre Watson and his prior  
18 criminal conduct, and I didn't hear an objection. I  
19 assume for whatever reason you don't have any problem  
20 with that testimony coming in.

21 MR. SHEKETOFF: Well, I should have moved to  
22 strike it, but then it just --

23 THE COURT: Draws more attention.

24 MR. SHEKETOFF: I didn't know he was --  
25 whoever it was, I didn't know they were going to

1 volunteer that level of detail. Who was it?

2 THE COURT: I think it might have been  
3 Poirier.

4 MS. OLLILA: Paul Poirier. It's spelled right  
5 out in his report.

6 MR. SHEKETOFF: I'm not saying it wasn't in  
7 his report. I'm just saying there are lots of things in  
8 people's reports that --

9 THE COURT: I thought, because you didn't  
10 object, that there had to be some strategy that you just  
11 didn't care, but I also thought it was inappropriate and  
12 improper and it was not something that he should have  
13 said. And I would be open to any sort of instruction  
14 you would want on that, but obviously at this point in  
15 time, it would draw the attention of the jury to it. So  
16 you can think about that.

17 Let me just also say with respect to  
18 objections, and I've said this obviously before and I  
19 just need you to be louder and give me a basis. Just  
20 one word is fine. And if I don't quite understand it, I  
21 may ask you to come up.

22 But Attorney Ollila is quick to, I think,  
23 adjust and try to reword the question to prevent the  
24 delay. So I completely appreciate that, but I think  
25 sometimes what happens is he gets a little railroaded.

1 And let me describe just one example of it, if I can  
2 recall it correctly. There was -- I think it was a  
3 question that was about -- oh, did you hear the  
4 testimony yesterday about Andre Watson? And this was to  
5 Detective Norris. Objection.

6 Here testimony, relevance, was the objection.  
7 I look over. I'm thinking, hmm, let me think about  
8 that for a minute. Meanwhile, you said, let me  
9 rephrase. You rephrased a question and your rephrased  
10 question was, was it the same person.

11 So essentially you rephrased quickly. And I  
12 don't mean in any way to cast aspersions at all on your  
13 intention there. I think you just perhaps didn't hear  
14 him. But ultimately your question usurped his objected  
15 question, and there really wasn't time at that point.  
16 And so as I'm listening to it, it really wasn't that  
17 objectionable ultimately, and you didn't renew the  
18 objection, but I think if we could just slow down a  
19 little bit, it would help this new judge as I try to  
20 rule on the individual objections. And I appreciate  
21 your ability to quickly rephrase. And sometimes that  
22 works, but I think I need to rule on his objection and  
23 then we can go from there. It might slow things down a  
24 bit.

25 MR. SHEKETOFF: With some of these objections,

1 I'm just afraid if we start down that road, where are we  
2 going next? Did you hear him say this? Did you hear  
3 him say that? Did you hear him say that? It's not like  
4 I've tried with her before so I know that this is just  
5 one thing. I personally think it's inappropriate to  
6 have some agent sit at counsel table who's the chief  
7 agent in the case and then get up and testify and start  
8 commenting -- because you have this ability to keep them  
9 in the courtroom, start commenting about what other  
10 people have said when he should really have been  
11 sequestered if he was the chief agent. The First  
12 Circuit has said, no, they're allowed to have somebody  
13 sit there. So sit there is fine, but then to start  
14 talking about what other people said in the courtroom --  
15 I don't know, because I haven't tried with her before,  
16 if this is the beginning of a flood or, you know, one  
17 little drip. One little drip I will live with.

18 THE COURT: Well, what we can do is simply,  
19 Judge, can we approach. Approach, and then we can  
20 confirm -- especially if it's in an area you have real  
21 concerns about, I encourage you to do that. We haven't  
22 had many sidebars. The two of you have been wonderful  
23 about the jury's time. I really appreciate that. We  
24 are coming near the end and now I'm urging you to slow  
25 down a little bit. I probably should have gone over

1 this a little sooner.

2                 But in any event, everything is going fine. I  
3 just wanted to make sure that with respect to  
4 objections, that there is a ruling on them, and then you  
5 can adjust after the ruling. Because if his objection  
6 is sustainable -- sometimes you see that it is and you  
7 immediately rephrase and that's fine. But I think a  
8 loud objection that she can hear and the basis that she  
9 can hear would assist.

10                MR. SHEKETOFF: Okay.

11                MS. OLLILA: And that issue on Andre Watson,  
12 so often I don't understand your objection. You say  
13 objection and you don't say what it is. Sometimes --  
14 you did -- I think it was on Friday -- say hearsay, and  
15 so I understand right away. The Andre Watson objection,  
16 I wasn't really sure what you were getting to. I could  
17 have easily had Sergeant Norris testify -- and it was  
18 really sloppy and stupid. Did you hear the testimony.

19                That's not the way I do it. I could have had  
20 him testify, did you run the motor vehicle plate on the  
21 car outside? Yes, I did. Who did it come back  
22 registered to? Andre Watson. Did you see the person go  
23 in? Yes, I did. Did you subsequently identify him?  
24 Yes, I did. Andre Watson.

25                I could have easily done it that way and it

1 was sloppy. I was trying to hurry and I just did not  
2 understand where you were going with it or what your  
3 objection was.

4 THE COURT: And I think very experienced  
5 judges appreciate that approach because it keeps things  
6 moving, and if they don't understand the objection, ask  
7 for a basis. I'm just going to ask for objection with  
8 basis, if you could. That would be very helpful to me.

9 MR. SHEKETOFF: Yes, your Honor.

10 THE COURT: Anything else? I think we're  
11 ready to go.

12 MS. OLLILA: I think we are.

13 MR. SHEKETOFF: Are we really going to finish  
14 today?

15 MS. OLLILA: We're really going to finish  
16 today.

17 THE COURT: We can be off the record at this  
18 point.

19 (Chambers conference adjourned at 8:50 a.m.)

20 BEFORE THE JURY

21 THE CLERK: Court has before it for  
22 consideration today jury trial day five, Criminal Case  
23 No. 14-cr-93-01-LM, United States of America versus  
24 Alkis Nakos.

25 THE COURT: Good morning, members of the jury.

1 We will continue now with testimony. Attorney Ollila.

2 MS. OLLILA: Judge, I have some bad news to  
3 start the day. Diane broke her arm over the weekend.  
4 However, we now have Cindy Budahn, who's also a  
5 paralegal at the U.S. Attorney's Office. She's been at  
6 the U.S. Attorney's Office for 29 years, and she is an  
7 excellent paralegal and she will assist for the last few  
8 days of trial. Thank you. May I proceed?

9 THE COURT: Yes, you may.

10 (Sergeant James Norris resumed the stand.)

11 DIRECT EXAMINATION (cont'd)

12 BY MS. OLLILA:

13 MS. OLLILA: Judge, if it's okay, we will pass  
14 out the transcripts because we will start off the  
15 morning with more Title III intercepts.

16 THE COURT: As you're handing those out, let  
17 me just remind the jury, as I instructed you on Friday,  
18 those transcripts are merely to assist, but it is your  
19 conclusion with respect to what is on those tapes that  
20 governs. You are the sole factfinders, but the  
21 transcripts will be there to assist you as you listen to  
22 the audio.

23 MS. OLLILA: Thank you, your Honor.

24 Q. Good morning, Sergeant Norris.

25 A. Good morning.

1           Q.     We left off on Friday on November 4th, 2013,  
2 and the jury had just heard a call between Kosmas  
3 Koustas and Charles Fowle, and during the call Kosmas  
4 Koustas had asked Charles Fowle where he was with that.  
5 What is your understanding of what "that" was a  
6 reference to?

7           A.     As far as where he was with the sale of the  
8 marijuana he had received.

9           Q.     I want to direct your attention to the  
10 transcript, which you must have in front of you. The  
11 transcript number would be 38JJ, 38JJ. Do you have that  
12 transcript in front of you, Sergeant Norris?

13          A.     Yes, I do.

14          Q.     What is the date of this call?

15          A.     November 9th, 2013.

16          Q.     And what was law enforcement doing on that  
17 day? Did you have any surveillance out?

18          A.     We did.

19          Q.     Why?

20          A.     In reference to a phone call that was  
21 intercepted.

22          Q.     And why did you send out surveillance because  
23 of an intercepted telephone call?

24          A.     To observe a meeting.

25          Q.     And who was the meeting going to occur

1 between?

2 A. Kosmas Koustas and Jeremy Blevens.

3 Q. And is it the same Jeremy Blevens that Kosmas  
4 Koustas called when he was on his way back from  
5 Massachusetts on October 23rd, 2013?

6 A. Yes.

7 MS. OLLILA: Cindy, could you please play  
8 38A-2L, 28A-2L.

9 (Played recording.)

10 Q. What happened after you received that call?  
11 What did law enforcement observe?

12 A. A meeting between Jeremy Blevens and Kosmas  
13 Koustas.

14 Q. Did you see any exchanges? And how long were  
15 those two in the area of the Game Stop?

16 A. Without a report I'm not sure I can recall.

17 Q. Let me direct your attention to the very next  
18 day, November 10th, 2013. I'm going to draw your  
19 attention to transcript 38NN, not 38MM, 38NN as in  
20 Nancy. Was there a call received between Kosmas Koustas  
21 and Jeremy Blevens on that date?

22 A. Yes.

23 Q. Did law enforcement monitor the call?

24 A. Yes.

25 MS. OLLILA: Cindy, will you please play

1 38A-2N.

2 (Played recording.)

3 Q. Sergeant Norris, Jeremy Blevens says: This  
4 kid was asking if I could get him something today, but  
5 he's going to supposedly have a G from me. What do you  
6 understand a G to be a reference to?

7 A. \$1,000.

8 Q. And then Jeremy Blevens says: And I think I  
9 will only have a G on me. And what do you understand  
10 that to be a reference to?

11 A. \$1,000.

12 Q. So Jeremy Blevens is going to have how much  
13 money to purchase something?

14 A. \$2,000.

15 MS. OLLILA: Keep playing.

16 (Played recording.)

17 Q. Sergeant Norris, that was November 10th, 2013;  
18 correct?

19 A. Yes.

20 Q. Did you get ready to send out surveillance  
21 units as a result of that call?

22 A. I believe we did.

23 Q. Why?

24 A. To observe a meeting.

25 Q. Now, on the same day, let me show you what has

1 been marked as Government's Exhibit 38-00. On that same  
2 date, was there a text message that was received by  
3 Kosmas Koustas from Jeremy Blevens?

4 A. Yes.

5 Q. And what did the text message say?

6 A. The text message read: That's a go. I'm  
7 going to Weare real quick.

8 Q. What did you understand that to mean, that's a  
9 go?

10 A. The meeting that the drug deal was set and  
11 they were ready to go.

12 Q. Let me draw your attention to the transcript,  
13 which should be 38PP, not 38-00, 38PP. Do you have 38PP  
14 in front of you, Sergeant Norris?

15 A. Yes, I do.

16 Q. And who are the participants to this call?

17 A. Kosmas Koustas and Jeremy Blevens.

18 Q. And is Kosmas Koustas calling someone or is  
19 Jeremy Blevens calling him?

20 A. This is an outgoing phone call from Kosmas  
21 Koustas to Jeremy Blevens.

22 MS. OLLILA: Cindy, please play 38A-20.

23 (Played recording.)

24 Q. So Jeremy Blevens says to Kosmas Koustas:  
25 Hey, do you have, ah, one of them number things with

1 you? What do you understand that to mean?

2 A. A scale.

3 Q. Why would individuals need a scale?

4 A. To weigh the drugs.

5 Q. Do you recall on October 23rd, 2013, Jeremy  
6 Blevens asked Kosmas Koustas for "that girl"?

7 A. Yes.

8 Q. And what was that a reference to?

9 A. Molly, MDMA.

10 Q. Do individuals who are purchasing MDMA  
11 typically weigh the product out before they get it?

12 A. You would weigh product if you received it,  
13 yes.

14 Q. In this call what is your understanding of  
15 what is going to be exchanged?

16 A. Based on the context of the phone call, I  
17 believe it to be Molly or MDMA.

18 MS. OLLILA: Go ahead and play that.

19 (Played recording.)

20 Q. What happened after this call occurred, if you  
21 recall?

22 A. I do not.

23 Q. Okay. What I want to do is I want to direct  
24 your attention to December 3rd, 2013. You had testified  
25 on Friday that when Kosmas Koustas was coming back from

1 Massachusetts and before he went, he would call a  
2 certain telephone number. Do you recall that testimony?

3 A. Yes.

4 Q. And who was the telephone number subscribed  
5 to?

6 A. Alkis Nakos.

7 Q. At some point on or around December 3rd did  
8 law enforcement gain information that Kosmas Koustas was  
9 going to make another trip to Massachusetts to obtain  
10 what you believed would be a quantity of marijuana?

11 A. I believe so, yes.

12 Q. And let me draw your attention to 39EE, page  
13 91. So, Sergeant Norris, what I want you to do -- Cindy  
14 just highlighted a call in yellow. Why don't you tell  
15 the jury what the date of the call is.

16 A. December 3rd, 2013.

17 Q. Is that an outgoing or incoming call?

18 A. That's an outgoing call.

19 Q. Who's placing the call?

20 A. The call was placed by Kosmas Koustas's  
21 telephone.

22 Q. And who is he contacting?

23 A. Phone number 603-966-8239.

24 Q. And who is that subscribed to?

25 A. Alkis Nakos.

1 MS. OLLILA: Now, Cindy, please turn to page  
2 92.

3 Q. On the same date, Sergeant Norris, at  
4 10:10 a.m., is there another call between Kosmas Koustas  
5 and Alkis Nakos?

6 A. Yes.

7 Q. And who was placing the call?

8 A. Another outgoing call from Kosmas Koustas's  
9 phone.

10 Q. How long does the call last?

11 A. Four minutes, 36 seconds.

12 MS. OLLILA: Cindy, now go to page 93.

13 Q. Sergeant Norris, you are now looking at page  
14 93 of Government's Exhibit EE. Do you see what has been  
15 highlighted in yellow?

16 A. Yes.

17 Q. Does that also reflect a call on December 3rd,  
18 2013?

19 A. It does.

20 Q. Who was placing the call?

21 A. Outgoing phone call from Kosmas Koustas's  
22 phone.

23 Q. To whom?

24 A. Phone subscribed to Alkis Nakos.

25 Q. And how long does the conversation last?

1 A. Eight minutes, 38 seconds.

2 MS. OLLILA: Now, Cindy, please go to page 94.

3 Q. Sergeant Norris, you are now looking at page  
4 94 of Government's Exhibit 39EE. Do you see that there  
5 is a yellow highlight in one of the boxes?

6 A. Yes.

7 Q. And what time is the call made?

8 A. 7:35:05 p.m.

9 Q. Who is making the call?

10 A. It's an outgoing phone call from Kosmas  
11 Koustas's phone.

12 Q. To whom?

13 A. Phone subscribed to Alkis Nakos.

14 Q. And how long does the conversation last?

15 A. Two minutes, 5 seconds.

16 Q. When law enforcement see this, what is it that  
17 you are believing is going to occur, if anything?

18 MR. SHEKETOFF: Objection, speculation.

19 THE COURT: Sustained.

20 Q. On December 4th, 2013, were law enforcement  
21 monitoring the wire of Kosmas Koustas?

22 A. Yes.

23 MS. OLLILA: Cindy, please pull up page 97.

24 Q. Sergeant Norris, you are now looking at page  
25 97 of Government's Exhibit 39EE. What date are these

1 calls made?

2 A. December 4th, 2013.

3 Q. And the first call, what time does it occur?

4 A. 9:15:41 in the morning.

5 Q. How long does the conversation last?

6 A. Six minutes, 39 seconds.

7 Q. Is there another conversation on that date?

8 A. Yes.

9 Q. And what time did it occur?

10 A. 9:38:37 a.m.

11 Q. And how long did the conversation last?

12 A. Six minutes, 49 seconds.

13 MS. OLLILA: Cindy, please pull up page 99.

14 Q. On the same date -- strike that. What date is  
15 this page referencing?

16 A. This page is for December 4th, 2013.

17 Q. At 7:41:44 p.m., is there an outgoing call  
18 made?

19 A. Yes.

20 Q. Who is making the call?

21 A. Outgoing call from Kosmas Koustas's phone.

22 Q. And what number is he contacting?

23 A. 603-966-8239.

24 Q. Whose number is that registered to?

25 A. Alkis Nakos.

1 MS. OLLILA: On page 100, Cindy.

2 Q. You are now on page 100 of Government's  
3 Exhibit 39EE. Is there an outgoing call made by Kosmas  
4 Koustas at 8:28:26 p.m.?

5 A. Yes.

6 Q. And who is he contacting?

7 A. 603-966-8239.

8 Q. The following day, December 5th, 2013, I will  
9 direct your attention to these same records.

10 MS. OLLILA: Cindy, please go to page 103.

11 Q. Is there a reference on December 5th, 2013, to  
12 an outgoing call being placed by Kosmas Koustas at  
13 10:31:57?

14 A. Yes, there is.

15 Q. And who is he contacting?

16 A. 603-966-8239.

17 Q. And how long does the conversation last?

18 A. Ten minutes, 43 seconds.

19 Q. At some point in time, Sergeant Norris, do law  
20 enforcement intercept text messages between Kosmas  
21 Koustas and an individual believed to be a courier in  
22 Massachusetts?

23 A. On what date?

24 Q. On December 4th and 5th. And before you  
25 answer that, let me show you what's marked as

1 Government's Exhibit 39P for identification. I'd ask  
2 that you look through Government's Exhibit P for  
3 identification. Do you recognize those documents?

4 A. Yes.

5 Q. What are they?

6 A. Line sheets from the wiretap on 508-479-6296.

7 Q. And who had that number, 508-479-6296?

8 A. Kosmas Koustas.

9 Q. And those line sheets you're referring to, can  
10 you explain again to the jury what you mean by a line  
11 sheet?

12 A. The information for the line that you were up  
13 on, including the date, the time, direction of the phone  
14 call, and the synopsis.

15 Q. Are those line sheets a reflection of text  
16 messages sent and received between December 4th and 5th,  
17 2013?

18 A. Yes.

19 Q. Now, Sergeant Norris, early on in your  
20 testimony you testified that in order to get  
21 authorization to go up on a Title III intercept, a  
22 wiretap, you needed to have probable cause that a dirty  
23 call had been committed. Correct?

24 A. Yes.

25 Q. So if you're calling me, you and I are dealing

1       drugs together, the only way law enforcement can listen  
2       to our conversations is that they first have a dirty  
3       call; correct?

4           A.     Yes.

5           Q.     And the same applies to text messages; is that  
6       correct?

7           A.     Yes.

8           Q.     And what happens if during the original  
9       30 days of the intercept, there's not a dirty text  
10      message. Do you then get reauthorization to go up for  
11      another 30 days?

12       A.     No.

13       Q.     So during this period of December 4th and  
14      December 5th, 2013, did law enforcement have  
15      authorization to intercept text messages between Kosmas  
16      Koustas and whomever he's speaking to?

17       A.     No.

18       Q.     Were you operating blind at this point with  
19      respect to text messages?

20       A.     Yes.

21       Q.     You are seeing that Kosmas Koustas is sending  
22      text messages to a 508 number. Is that correct?

23       A.     Yes, it is.

24       Q.     And what is the number?

25       A.     508-723-3101.

1 Q. Did you attempt to determine the subscriber to  
2 that telephone?

3 A. We would have.

4 Q. And were you able to?

5 A. I don't believe so, no.

6 Q. Now, was that the same telephone number that  
7 Kosmas Koustas was contacting in Massachusetts via text  
8 message on October 23rd, 2013, the very first night of  
9 the wire?

10 A. I don't believe so, no.

11 Q. Is it common to see individuals who are  
12 dealing in drugs frequently drop their telephones?

13 A. Yes, it is.

14 Q. Was it surprising to you that you were seeing  
15 a brand-new number that Kosmas Koustas was contacting?

16 A. No, I was not.

17 MS. OLLILA: Cindy, please go to page 104.

18 Q. On December 5th at 2:31:24 p.m., is there an  
19 outgoing call made by Kosmas Koustas?

20 A. Yes.

21 Q. And who's he contacting?

22 A. Phone number 603-966-8239.

23 Q. How long does the conversation last?

24 A. Five minutes, two seconds.

25 MS. OLLILA: Now, Cindy, I want you to pull up

1 but not play yet 38A-2P.

2 Q. Now, Sergeant Norris, if you would turn your  
3 transcripts to 39R. By the way, at this point in time,  
4 Sergeant Norris -- you referred to a GPS tracking  
5 device; is that correct?

6 A. Did we apply for one?

7 Q. Yes.

8 A. Yes, we did.

9 Q. So at this point in time did you have a GPS  
10 tracking device on Kosmas Koustas's car?

11 A. Yes.

12 Q. And what kind of car was he driving?

13 A. A Volkswagen.

14 Q. How do you get a GPS tracking device? What do  
15 you have to do? Where do you have to go to get it as  
16 far as authorization to put the GPS tracking device?

17 A. You have to have court authorization.

18 Q. And do you have to establish that Kosmas  
19 Koustas was using the car that you want to place the  
20 tracker on in assisting him to deal drugs?

21 A. Yes.

22 Q. And did you do that?

23 A. Yes, we did.

24 Q. So at this point in time you were up on a  
25 wire, but you also have a tracking device on Kosmas

1       Koustas's car. Is that correct?

2           A. Yes.

3           Q. Are you able to follow him?

4           A. Yes.

5           Q. Did the tracking device show where he went on  
6 December 5th, 2013?

7           A. I don't believe it did, no.

8           MS. OLLILA: Cindy, I want you to play 38A-2P.

9                   (Played recording.)

10          Q. So, Sergeant Norris, on this date you received  
11 court authorization to have a GPS tracker on Kosmas  
12 Koustas's Volkswagen GTI; correct?

13           A. Yes.

14          Q. Did law enforcement want to conduct  
15 surveillance on Kosmas Koustas on this day,  
16 December 5th, 2013?

17           A. Yes.

18          Q. And did you conduct surveillance?

19           A. Yes.

20          Q. And was Kosmas Koustas driving the Volkswagen  
21 GTI?

22           A. No, he was not.

23          Q. Although he was not driving the car, did you  
24 watch him? Did you follow him?

25           A. Yes, there was surveillance established on

1 him.

2 Q. So when you engage in surveillance without the  
3 assistance of a GPS tracking device, how do you  
4 literally follow someone?

5 A. You have to have them in sight.

6 Q. And how many individuals does it take to  
7 surveil a target?

8 A. It varies.

9 Q. What did law enforcement see with respect to  
10 Kosmas Koustas?

11 A. I believe we located Mr. Koustas at his place  
12 of employment in Needham, Massachusetts.

13 Q. And what was his place of employment?

14 A. I believe it was called Food Tech Solutions.

15 Q. So Kosmas Koustas actually had a job?

16 A. Yes, he did.

17 Q. So what did you do? Did you follow him from  
18 Food Tech Solutions to somewhere?

19 A. I believe we observed him leaving the  
20 business, but due to traffic I believe we lost contact  
21 with the vehicle fairly quickly.

22 Q. At some point did you pick him back up?

23 A. I don't recall if we picked him back up  
24 around that timeframe.

25 Q. Did he ever show back up in New Hampshire?

1 A. Yes, he did.

2 Q. Now, the call that the jury just heard, I want  
3 you to look at that transcript, 39R, and I want you to  
4 tell the jury what time that conversation occurred.

5 A. This started at 7:53:52 p.m.

6 Q. So right before 8:00 at night on December 5th;  
7 correct?

8 A. Yes.

9 Q. So if Koustas is in the area of Worcester or  
10 Millbury, Massachusetts, at 8:00, how long would it take  
11 him to get back to Manchester?

12 A. Depending on traffic, I would estimate maybe  
13 an hour and a half, two hours.

14 Q. So what time would you expect Koustas to be  
15 pulling back into New Hampshire if this call occurred at  
16 8:00 p.m.?

17 A. Probably around 10:00 p.m.

18 MS. OLLILA: Now, Cindy, I want you to go to  
19 the 39EE and pull up page 106.

20 Q. So, Sergeant Norris, I want you to direct your  
21 attention to the highlighted area of this page, and I  
22 want you to tell the jury what time that call is made.

23 A. 9:37:31 p.m.

24 Q. And is that on December 5th?

25 A. Yes, it is.

1 Q. What is the telephone number that Kosmas  
2 Koustas is calling?

3 A. 603-966-8239.

4 Q. What is the telephone number that Kosmas  
5 Koustas is using to call 603-966-8239?

6 A. 603-261-0853.

7 Q. That is not the telephone that you're up on  
8 the wire on; correct?

9 A. That's correct.

10 Q. So Kosmas Koustas has two telephones with him?

11 A. That would be my belief, yes.

12 Q. How long does the conversation last?

13 A. One minute, 27 seconds.

14 Q. At 9:37 p.m.; correct?

15 A. Correct.

16 Q. Do law enforcement observe Kosmas Koustas come  
17 back into New Hampshire?

18 A. We did observe him in New Hampshire, yes.

19 Q. Where did he go?

20 A. I believe it was 140 South Porter Street,  
21 Manchester.

22 Q. 140 South Porter Street, Manchester. Who  
23 resides there, if you know?

24 A. We believed it to be the residence of his  
25 father.

1 Q. Of whose father?

2 A. Kosmas Koustas.

3 Q. So 140 Porter Street in Manchester, New  
4 Hampshire, is Kosmas Koustas's father; correct?

5 A. Yes.

6 Q. What time did Kosmas Koustas arrive at 140  
7 Porter Street?

8 A. I don't know off the top of my head.

9 Q. At some point in time, do law enforcement  
10 observe some other vehicle pulling into 140 Porter  
11 Street?

12 A. Yes.

13 Q. And what time is that?

14 A. I'm sorry, what kind of vehicle?

15 MR. SHEKETOFF: Objection, your Honor. I  
16 can't follow if this is hearsay or personal observation.

17 THE COURT: Can you ask personal observation.

18 Q. Did you personally observe.

19 A. The vehicle arrive?

20 Q. Yes.

21 A. No, I did not.

22 Q. Do you know what time the vehicle arrived?

23 MR. SHEKETOFF: Objection.

24 THE COURT: Sustained.

25 Q. On December 6th, the next day -- by the way,

1 let me clarify something. Did you see Kosmas Koustas  
2 pull into 140 Porter Street or was that other  
3 surveillance officers?

4 A. I believe someone else might have seen him  
5 pull in.

6 Q. Okay. I apologize for that. The very next  
7 day was December 6, 2013; correct?

8 A. Yes.

9 MS. OLLILA: Cindy, please pull up page 109.

10 Q. When you were surveilling Kosmas Koustas on  
11 December 5th and you went to Massachusetts, what did you  
12 believe he was doing in Massachusetts?

13 MR. SHEKETOFF: Objection.

14 THE COURT: Foundation?

15 MR. SHEKETOFF: Well, calls for speculation,  
16 what he believed he was doing.

17 THE COURT: Sustained.

18 Q. You were up on a wiretap, correct, Sergeant  
19 Norris?

20 A. Yes.

21 Q. And what does the wiretap involve? What were  
22 you listening for?

23 A. Drug dealings.

24 Q. What would Kosmas Koustas do when he went to  
25 Massachusetts?

1           A. He would either work or meet with an  
2 individual in the Worcester area.

3           Q. To do what?

4           A. We believed he was picking up drugs.

5           Q. So now on December 6, 2013, in this page that  
6 Cindy has pulled up, the very next day after  
7 December 5th when Koustas returns from Massachusetts,  
8 does he receive an incoming call?

9           A. Yes.

10          Q. Who's he receive the incoming call from?

11          A. 603-966-8239.

12          Q. How long does the conversation last?

13          A. 39 minutes, one second.

14           MS. OLLILA: Cindy, will you please pull up  
15 38A-2Q.

16          Q. Sergeant Norris, if you turn your transcripts  
17 to 39U. Are you at 39U?

18          A. Yes.

19          Q. Did Kosmas Koustas receive an incoming call?

20          A. Yes.

21          Q. Did he receive the incoming call from the same  
22 exact number, 508-723-3101, that he contacted the day  
23 before on December 5th, 2013?

24          A. Yes.

25          Q. And was this the very same number that between

1 December 4th and December 5th, 2013, there were in  
2 excess of ten text messages between Kosmas Koustas and  
3 this number?

4 A. Yes.

5 Q. And did you have any information at all to  
6 understand what was being said in those text messages?

7 A. No.

8 Q. So during this telephone call on December 6,  
9 2013, do the two engage in a conversation?

10 A. Yes, they do.

11 MS. OLLILA: Cindy, go ahead and play it.

12 (Played recording.)

13 Q. Sergeant Norris, the individual in  
14 Massachusetts calls Koustas and says: I was just  
15 calling to let you know, um, I was supposed to have  
16 gotten that for you. What do you understand "that" to  
17 mean?

18 A. We believe that to be marijuana.

19 MS. OLLILA: Go ahead and play.

20 (Played recording.)

21 MS. OLLILA: Okay. I want you to rewind it to  
22 the beginning.

23 Q. The individual says he was supposed to receive  
24 it, like, an hour ago, but I haven't heard from them  
25 yet. Is that correct?

1 A. Yes.

2 MS. OLLILA: Now, Cindy, I want you to replay  
3 the whole thing.

4 (Played recording.)

5 Q. So the individual says -- excuse me, Kosmas  
6 Koustas says: It's going to be no good, Roy. Correct?

7 A. Yes.

8 Q. What do you understand that to mean?

9 A. That it's not going to take place.

10 Q. What's not going to take place?

11 A. The drug transaction.

12 Q. Who was telling who that the drug transaction  
13 was not going to take place?

14 A. Kosmas Koustas was telling the user of the  
15 other telephone.

16 Q. Who had Kosmas Koustas engaged in a 39-minute  
17 conversation with before calling this number?

18 A. 603-966-8239.

19 Q. And who's that number subscribed to?

20 A. Alkis Nakos.

21 Q. The male says: Did you hear it's not going to  
22 be good. And what does Kosmas Koustas say?

23 A. Yeah, no go.

24 MS. OLLILA: Go ahead and play.

25 (Played recording.)

1 Q. So Kosmas Koustas says: Maybe tomorrow or the  
2 next day. What do you understand him to mean?

3 A. That the drug transaction would be good to go  
4 tomorrow or the next day.

5 Q. And what is the next day?

6 A. That would have been December 7th.

7 Q. Of what year?

8 A. 2013.

9 Q. And what does the individual say to Koustas?

10 A. He says all right.

11 Q. He says: Thank you for letting me know.

12 Correct?

13 A. Yes, he goes on to say that.

14 Q. So that individual in Massachusetts had no  
15 idea that a transaction had been cancelled; is that  
16 correct?

17 A. According to this, yes.

18 Q. Is that your understanding from the  
19 transcript?

20 A. Yes.

21 Q. On December 7th, 2013, are law enforcement  
22 monitoring the wire?

23 A. Yes.

24 MS. OLLILA: Cindy, please pull up 38A-2R.

25 Q. And, Sergeant Norris, I'd ask that you direct

1 your attention to transcript 39V. Are you at 39V?

2 A. Yes, I am.

3 Q. Is it an outgoing call or an incoming call?

4 A. This was an outgoing telephone call.

5 Q. And who's calling? Who's doing the calling?

6 A. Kosmas Koustas.

7 Q. And what is the number he's calling?

8 A. A Massachusetts number.

9 Q. And what is that number?

10 A. 508-723-3101.

11 Q. Is that the same exact number that he called  
12 -- that he received a call from the day before, on  
13 December 6, 2013, and he said, it's going to be no go,  
14 Roy?

15 A. Yes.

16 Q. So he's calling that same number on December  
17 7th; correct?

18 A. Correct.

19 MS. OLLILA: Cindy, why don't you go ahead and  
20 play 38A-2R.

21 (Played recording.)

22 Q. I just don't know where we'd be able to do it.  
23 What's your understanding of what that means?

24 A. A place where they were going to conduct a  
25 drug transaction.

1 Q. Do individuals who conduct drug transactions  
2 do it out in broad daylight?

3 A. They may.

4 MS. OLLILA: Go ahead.

5 (Played recording.)

6 Q. I have to go and get that for you. What do  
7 you understand "that" is?

8 A. I believe he was referencing the marijuana.

9 MS. OLLILA: Go ahead and play.

10 (Played recording.)

11 Q. Sergeant Norris, if you turn your transcript  
12 to 39W.

13 MS. OLLILA: And, Cindy, if you'd queue up  
14 38A-2S, please. Are you at 39W, Sergeant Norris?

15 A. Yes, I am.

16 Q. What time does this conversation occur?

17 A. 6:23:29 p.m.

18 Q. Is it an outgoing or incoming call?

19 A. Incoming call.

20 Q. Who's calling Kosmas Koustas?

21 A. Telephone number 508-723-3101.

22 Q. Is it the same number that Kosmas Koustas had  
23 been speaking with on December 5th and December 6th and  
24 having text message exchanges with on December 4th and  
25 December 5th?

1 A. Yes.

2 MS. OLLILA: Go ahead and play that, Cindy.

3 (Played recording.)

4 Q. What time was that call, Sergeant Norris?

5 A. 6:23:29 p.m.

6 Q. Would you expect Kosmas Koustas to be arriving  
7 back in Manchester at some point that night?

8 A. Yes.

9 Q. And did he?

10 A. Yes, he did.

11 Q. Where did he go?

12 MR. SHEKETOFF: Well, objection, your Honor.

13 MS. OLLILA: Strike that, Judge.

14 Q. Three days later on December 10th, 2013 --

15 MS. OLLILA: Cindy, please pull up 39EE and go  
16 to page 124.

17 Q. This is three days later on December 10th,  
18 2013. Does Kosmas Koustas have any outgoing calls?

19 A. Yes.

20 Q. Who is he calling?

21 A. On the 10th at --

22 Q. At 2:57:44.

23 A. Telephone No. 603-966-8230.

24 MS. OLLILA: Thank you, Cindy.

25 Q. And what time is that?

1 A. That would be 2:57:44 p.m.

2 Q. Now, about one hour later, if you look at your  
3 transcript, 39AA, about one hour later, does Kosmas  
4 Koustas make a telephone call to someone?

5 A. He receives a telephone call.

6 Q. I'm sorry, who's he receive the call from?

7 A. Charles Fowle.

8 MS. OLLILA: Cindy, I'd ask you to pull up  
9 38A-2T, 38A-2T.

10 Q. And approximately how long is this  
11 conversation after Kosmas Koustas had a conversation  
12 with 966-8239?

13 A. It was approximately an hour later.

14 MS. OLLILA: Go ahead and play it, Cindy.

15 (Played recording.)

16 Q. What do you understand Kosmas Koustas to be  
17 saying? This is the welfare place. If you want to find  
18 customers you come here.

19 A. I believe he's referencing drug customers.

20 MS. OLLILA: Go ahead.

21 (Played recording.)

22 Q. Charlie Fowle says to Kosmas Koustas, I will  
23 have something for you today. What do you understand  
24 that is a reference to?

25 A. Money.

1 MS. OLLILA: Go ahead and play.

2 (Played recording.)

3 Q. Charlie Fowle says: Well, how is it? And  
4 Kosmas Koustas says, I got different stuff. Different  
5 things happen. What do you understand that's a  
6 reference to?

7 A. Different type or strain of marijuana.

8 Q. How many days had it been since he returned  
9 from Massachusetts?

10 A. I believe it was three.

11 MS. OLLILA: Go ahead and play, Cindy.

12 (Played recording.)

13 Q. Now, Sergeant Norris, the wire -- how many  
14 target telephones did law enforcement go up on during  
15 the course of this wire?

16 A. I believe it was six.

17 Q. And why don't you tell the jury whose  
18 telephones that you went up on.

19 A. I believe it was four lines for Kosmas  
20 Koustas, one line for Charles Fowle, and one for Jeremy  
21 Blevens.

22 Q. Now, why did you need to go up on four lines  
23 for Kosmas Koustas? What was happening?

24 A. They were for separate phone numbers as they  
25 changed.

1 Q. Why did you need to go up on separate phones?

2 A. If phones changed, you needed to go to the  
3 next phone.

4 Q. Did he drop phones?

5 A. He did.

6 Q. So when he would drop a phone, what did you  
7 have to do?

8 A. You had to obtain the new phone number and  
9 obtain a dirty phone call into that number.

10 Q. Did it take quite a while?

11 A. Yes, it did.

12 Q. I want to direct your attention to  
13 January 16th, 2014, and I want you to look at transcript  
14 40J. It's quite a ways into your transcript. 40J.

15 MS. OLLILA: And, Cindy, please queue up  
16 40A-2A, 40A-2A.

17 Q. Now, Sergeant Norris, if you look at the  
18 target telephone number, what is the target telephone  
19 number during this call?

20 A. Area code 508-745-9616.

21 Q. Is this a number associated with Kosmas  
22 Koustas?

23 A. Yes.

24 Q. This is a brand-new number; correct?

25 A. It is a different number than previous, yes.

1           Q. Before you went up on this phone, you received  
2 additional authorization; correct?

3           A. Yes.

4           Q. And who is Kosmas Koustas contacting during  
5 this telephone call?

6           A. Charles Fowle.

7           Q. And is this a new number for Charles Fowle?

8           A. Yes, it is.

9           Q. So both of them had received new phones within  
10 a month; is that correct?

11          A. Yes.

12          MS. OLLILA: Go ahead and play, Cindy.

13          (Played recording.)

14          Q. Charlie Fowle says: Somebody wants that other  
15 thing. And then he says: Yeah, the other thing that  
16 starts with the same -- the same first letter. What is  
17 the first letter of marijuana?

18          A. M.

19          Q. What is the first letter of Molly?

20          A. M.

21          Q. What is the first letter of MDMA?

22          A. M.

23          Q. What do you understand Charles Fowle to be  
24 asking Kosmas Koustas for during this call?

25          A. MDMA.

1 MS. OLLILA: Go ahead and play.

2 (Played recording.)

3 Q. See what you can do to get some paper. What  
4 do you understand that to be a reference to?

5 A. Money.

6 MS. OLLILA: Keep playing, Cindy.

7 (Played recording.)

8 MS. OLLILA: Pause.

9 Q. Kosmas Koustas says: I might see you tomorrow  
10 night with -- and then he stopped; correct? And then he  
11 says: You know what I mean? It all depends. I got to  
12 make some phone calls. What do you understand that to  
13 mean?

14 A. That he's going to be making some phone calls  
15 in reference to this trip.

16 MS. OLLILA: Go ahead.

17 (Played recording.)

18 Q. What is "the normal thing"?

19 A. It would be marijuana.

20 MS. OLLILA: Go ahead.

21 (Played recording.)

22 Q. Sergeant Norris, let me have you pull up the  
23 next transcript, which is 40K, direct your attention to  
24 40K.

25 MS. OLLILA: And, Cindy, if you pull up

1 40A-2B, 40A-2B.

2 Q. The transcript 40K, who are the participants  
3 to the conversation?

4 A. Kosmas Koustas and Charles Fowle.

5 Q. What time does the conversation occur and what  
6 is the date?

7 A. The date is January 19th, 2014, and the time  
8 is approximately 8:59:55 p.m.

9 Q. Now, in the prior call referenced in 40A-2A,  
10 Charles Fowle asked Kosmas Koustas what you surmised to  
11 be for some MDMA; is that correct?

12 A. Yes.

13 MS. OLLILA: Go ahead and play this call,  
14 Cindy.

15 (Played recording.)

16 MS. OLLILA: Stop.

17 Q. Koustas says: So you changed your number?  
18 And what did Fowle say?

19 A. Yep.

20 Q. So he got yet another new phone; is that  
21 correct?

22 A. Yes.

23 MS. OLLILA: Go ahead and play.

24 (Played recording.)

25 MS. OLLILA: Pause it.

1           Q.     So the telephone that Kosmas Koustas is  
2 contacting Charlie Fowle over, how long had he had it  
3 for before he starts saying he'd got to get yet another  
4 one. Had he even had it for a month?

5           A.     I don't believe it was more than a month, no.

6           MS. OLLILA: Go ahead and play, Cindy.

7                   (Played recording.)

8           Q.     Kosmas Koustas says that he's all F'd up and  
9 he's still a little F'd up from that. What did you  
10 understand him to be referencing from that?

11          A.     MDMA.

12          Q.     What happens if you touch MDMA and it gets in  
13 your body?

14          A.     You would feel the effects of the drug.

15          MS. OLLILA: Go ahead and play.

16                   (Played recording.)

17          Q.     Is MDMA highly potent?

18          A.     Yes.

19          MS. OLLILA: Go ahead and play.

20                   (Played recording.)

21          Q.     Like three grains of sand. So would two  
22 pounds of MDMA be an extraordinary amount?

23          A.     That would be a lot, yes.

24          MS. OLLILA: Go ahead and play.

25                   (Played recording.)

1 Q. Now, I want to direct your attention a couple  
2 months ahead on March 6, 2014. If you look at  
3 transcript 41-0.

4 MS. OLLILA: Cindy, please queue up 41A-1A,  
5 41A-1A.

6 Q. Is Kosmas Koustas receiving a call on this  
7 transcript or making a call?

8 A. He's receiving a call.

9 Q. What time is the call occurring?

10 A. 3:55:52 p.m.

11 MS. OLLILA: Go ahead and play it, Cindy.

12 (Played recording.)

13 MS. OLLILA: Pause.

14 Q. This individual who's identified in the  
15 transcript as UM, Unknown Male No. 26, he says, I just  
16 gout out of work, but I've got to go up north. What's  
17 up north?

18 A. The border.

19 MS. OLLILA: Go ahead and play.

20 (Played recording.)

21 MS. OLLILA: Pause that.

22 Q. Koustas says: You're going up north? And he  
23 says: I have to. And then Koustas says what word?

24 A. Plattsburgh.

25 Q. Where is Plattsburgh?

1 A. Upstate New York on the border.

2 Q. On the border of what?

3 A. Canada.

4 MS. OLLILA: Go ahead.

5 (Played recording.)

6 MS. OLLILA: Pause that and you can get out of  
7 that, Cindy.

8 Q. If you draw your attention to 41R, which  
9 should be two transcripts from where you were.

10 MS. OLLILA: Cindy, please queue up 41A-1C,  
11 41A-1C.

12 Q. This conversation occurred on March 15, 2014;  
13 correct?

14 A. Yes.

15 Q. And the conversation occurred between who and  
16 who?

17 A. Kosmas Koustas and Christopher Ranfos.

18 Q. What time did the conversation occur?

19 A. 1:53:19 p.m.

20 MS. OLLILA: Go ahead and play.

21 (Played recording.)

22 MS. OLLILA: Pause that.

23 Q. At the time was Kosmas Koustas actually doing  
24 some construction work for someone at this time?

25 A. I believe they were doing some construction at

1 an apartment, yes.

2 MS. OLLILA: Okay. Go ahead.

3 (Played recording.)

4 Q. Christopher Ranfos says: I'm going to come by  
5 and check out that heat?

6 A. Yes.

7 Q. What do you understand that to mean?

8 A. I believe he was referencing marijuana.

9 MS. OLLILA: Go ahead and play.

10 (Played recording.)

11 Q. Do law enforcement at some point in time then  
12 see Christopher Ranfos show up and meet with Kosmas  
13 Koustas?

14 MR. SHEKETOFF: Objection, your Honor, unless  
15 it's personal knowledge.

16 THE COURT: Foundation.

17 Q. Do you have personal knowledge?

18 A. I did receive knowledge of that, yes.

19 Q. Were you there when that happened?

20 A. No.

21 Q. Okay. Let me go now to March 30, 2014. At  
22 some point in time on March 30th, did law enforcement  
23 develop information that Kosmas Koustas was going to  
24 travel to Massachusetts?

25 A. Yes.

1           Q.     Please pull up, Sergeant Norris, 41Y of your  
2 transcripts.

3           MS. OLLILA:  And, Cindy, queue up 41A-1D,  
4 41A-1D.

5           Q.     When Kosmas Koustas was on his way back from  
6 Massachusetts, did you request a Massachusetts state  
7 trooper to stop him?

8           A.     I believe we requested New Hampshire State  
9 Police stop him.

10          Q.     I'm sorry, I said Massachusetts.  And did that  
11 happen?

12          A.     Yes.

13          Q.     After the stop did Kosmas Koustas take off and  
14 engage in a high-speed chase?

15          A.     Yes, he did.

16          Q.     Do you know how fast he was going on 93  
17 heading north?

18          A.     I do not.

19          MS. OLLILA:  Cindy, why don't you go ahead and  
20 play 41 -- correct.

21                 (Played recording.)

22          Q.     Did law enforcement lose Kosmas Koustas?  Was  
23 the high-speed chase stopped because it endangered the  
24 public?

25          A.     Yes.

1 Q. Did law enforcement lose Koustas?

2 A. Yes.

3 Q. Please turn to 41V.

4 MS. OLLILA: And, Cindy, please queue up  
5 41A-1E.

6 Q. What is 41V, Sergeant Norris?

7 A. Transcript of a phone call.

8 Q. Between who and who?

9 A. Kosmas Koustas and an unknown male.

10 MS. OLLILA: Cindy, why don't you go ahead and  
11 play 41A-1E.

12 (Played recording.)

13 Q. Go to my house and inside my house in the  
14 closet there's a shoebox. And he's explaining  
15 something; correct?

16 A. Yes.

17 Q. What are you doing right now -- not right now  
18 today. As of that date on March 30th, 2014, when you  
19 are listening to this conversation, are you ordering  
20 people to travel to Koustas's residence?

21 A. Once we obtained this information, yes, we  
22 directed law enforcement to respond to the residence.

23 Q. And what was that residence?

24 A. 1465 Hooksett Road.

25 Q. Why did you have law enforcement respond to

1 the residence?

2 A. That was Kosmas Koustas -- that was his  
3 residence, and based on the context of this phone call,  
4 we sent law enforcement there to secure the residence.

5 Q. Have you at this point in time planned to take  
6 the wire down?

7 A. No.

8 Q. So Kosmas Koustas is in a high-speed chase  
9 with a member of the New Hampshire State Police, and he  
10 says it was a setup. What is that going to do to your  
11 wire now?

12 A. I believe that that would probably be the end  
13 of it, that no one would use the telephone after that  
14 time.

15 MS. OLLILA: Go ahead and keep playing, Cindy.

16 (Played recording.)

17 Q. Says: Next to my bed there's a thing of Mol.  
18 What's Mol a reference to?

19 A. Molly or MDMA.

20 Q. Was there a search warrant executed at Kosmas  
21 Koustas's residence?

22 A. Yes.

23 Q. Who applied for the search warrant?

24 A. I did.

25 Q. Did you draft an affidavit?

1 A. Yes.

2 Q. Was it signed?

3 A. It was.

4 Q. Was the search warrant authorized?

5 A. Yes.

6 Q. Was it executed?

7 A. It was.

8 Q. Was there Molly or MDMA seized at Kosmas  
9 Koustas's residence?

10 A. Yes.

11 Q. How much?

12 A. I believe it was two pounds.

13 Q. I'm going to have you put these gloves on.

14 Did you recall hearing Kosmas Koustas tell that unknown  
15 man, go to my bedroom, there's a shoebox?

16 A. Yes.

17 Q. And did he tell that individual to get the  
18 shoebox?

19 A. Yes.

20 Q. Did law enforcement beat him to the house?

21 A. Yes.

22 Q. Did law enforcement surround the house?

23 A. Yes.

24 Q. And was the house secured until a search  
25 warrant was obtained?

1 A. Yes, it was.

2 MS. OLLILA: Can the witness please come down  
3 from the witness stand, Judge.

4 THE COURT: He may.

5 Q. Sergeant Norris, I'm going to ask you to very  
6 carefully try to take that shoebox out.

7 Now I will hold the shoebox, and why don't you  
8 take out what is in Government's Exhibit 41KK-6. Do you  
9 see this exhibit? Let me show you the exhibit sticker  
10 first. 41KK-6.

11 A. Yes.

12 Q. What does this exhibit contain?

13 A. Brown chunk of powder.

14 Q. Was that sent to the New Hampshire State  
15 Police forensic laboratory?

16 A. Yes.

17 Q. Did it test positive for the presence of 3,4  
18 methylenedioxymethamphetamine?

19 A. Yes, it did.

20 Q. In the amount of two pounds?

21 A. Yes, it did.

22 Q. Can you please show it to the jury. Is that a  
23 lot of MDMA?

24 A. Yes, it is.

25 Q. In addition to seizing the MDMA, were there

1 other items taken from Kosmas Koustas's residence at  
2 1465 Hooksett Road?

3 A. Yes.

4 MS. OLLILA: Your Honor, I didn't ask that the  
5 ID be stricken on 41KK-6. I'd do that right now,  
6 please, Judge, and it be entered into full evidence.

7 MR. SHEKETOFF: I have no objection.

8 THE COURT: It's a full exhibit.

9 (Government's Exhibit 41KK-6 admitted.)

10 Q. Sergeant Norris, I'm showing you now what is  
11 marked as 42JJ-2. Do you recognize what this is?

12 A. Yes.

13 Q. What is it?

14 A. Two containers of Inositol powder.

15 Q. What is Inositol?

16 A. It's a supplement I believe.

17 Q. Could it be used to -- as an additive for  
18 MDMA?

19 A. They can use it as a cutting agent to make the  
20 quantity more.

21 Q. Why don't you explain that to the jury. You  
22 use it as a cutting agent to make the quantity more.  
23 Where would you get Inositol?

24 A. Health food stores such as GNC, things of that  
25 nature, where you'd obtain dietary supplements.

1 Q. This is absolutely legal; correct?

2 A. Yes, it is.

3 Q. What is the color of this Inositol?

4 A. Should be white.

5 Q. When drug dealers want to increase the volume  
6 of their product to increase their profit, what do they  
7 add to the product?

8 A. They would add something like Inositol.

9 Q. If I want to buy your product and you're  
10 adding this, would it make me not want to buy your  
11 product because you are adding something that is not a  
12 controlled substance?

13 A. It would depend on the amount.

14 MS. OLLILA: Your Honor, I'd ask that the ID  
15 be stricken on 42JJ-2 and it be entered into full  
16 evidence.

17 MR. SHEKETOFF: I have no objection.

18 THE COURT: Full exhibit.

19 (Government's Exhibit 42JJ-2 admitted.)

20 Q. Sergeant Norris, I'm showing you what has been  
21 marked as 41JJ-1. Do you recognize what this is?

22 A. Yes.

23 Q. What is it?

24 A. A digital scale.

25 Q. What is a digital scale used for?

1 A. To weigh items.

2 Q. What about in the drug trafficking business?

3 A. To weigh drugs.

4 Q. Would an individual be able to weigh MDMA on a  
5 scale?

6 A. Yes.

7 Q. By the way, that's two pounds of MDMA. What  
8 is a user size of MDMA?

9 A. I would estimate it to be maybe a gram.

10 MS. OLLILA: Your Honor, I'd ask that the ID  
11 be stricken on 41JJ-1 and it be entered into full  
12 evidence.

13 MR. SHEKETOFF: No objection.

14 THE COURT: Full exhibit.

15 (Government's Exhibit 41JJ-1 admitted.)

16 Q. I'm now showing you what is marked as 42JJ-3.  
17 Do you recognize what this is?

18 A. Acetone.

19 Q. Why did law enforcement seize acetone?

20 A. Sometimes it may be used with cocaine.

21 MS. OLLILA: Your Honor, I'd ask that the ID  
22 be stricken on 42JJ-3 and it be entered into full  
23 evidence.

24 MR. SHEKETOFF: No objection.

25 THE COURT: Full exhibit.

1 (Government's Exhibit 41JJ-3 admitted.)

2 Q. You're holding what is marked as 42JJ-4. Do  
3 you recognize what this is?

4 A. Yes.

5 Q. What is it?

6 A. A money counter.

7 Q. Is it an electronic money counter?

8 A. Yes.

9 Q. Have you ever seen one of these?

10 A. I have.

11 Q. Do drug traffickers use these?

12 A. They do.

13 Q. For what?

14 A. Count money.

15 MS. OLLILA: Your Honor, I'd ask that the ID  
16 be stricken on 42JJ-4 and it be entered into full  
17 evidence.

18 MR. SHEKETOFF: I have no objection.

19 THE COURT: It's a full exhibit.

20 (Government's Exhibit 41JJ-4 admitted.)

21 Q. Sergeant Norris, I'm showing you what is  
22 marked as 41KK-1. I will ask if you recognize what that  
23 is.

24 A. Yes.

25 Q. What is it?

1 A. Handgun.

2 Q. Where was this handgun seized?

3 A. Residence at 1465 Hooksett Road, Kosmas  
4 Koustas's residence.

5 MS. OLLILA: Your Honor, I'd ask that the ID  
6 be stricken on 41KK-1 and it be entered into full  
7 evidence.

8 MR. SHEKETOFF: I have no objection.

9 THE COURT: Full exhibit.

10 (Government's Exhibit 41KK-1 admitted.)

11 Q. I'm going to show you what is marked as  
12 41KK-2. Do you recognize what that is?

13 A. Yes.

14 Q. What is it?

15 A. Handgun.

16 Q. Where was it seized?

17 A. Residence of Kosmas Koustas.

18 MS. OLLILA: Your Honor, I'd ask that the ID  
19 be stricken on 41KK-2 and it be entered into full  
20 evidence.

21 MR. SHEKETOFF: I have no objection.

22 THE COURT: Full exhibit.

23 (Government's Exhibit 41KK-2 admitted.)

24 Q. Was there also ammunition seized at that  
25 residence?

1 A. Yes.

2 Q. Were there also clips containing ammunition  
3 seized at that residence?

4 A. Yes.

5 Q. Let me show you 41KK-7. Do you recognize  
6 that?

7 A. Yes.

8 Q. What is it?

9 A. .25 automatic ammunition.

10 Q. Where was that seized?

11 A. At the residence of Kosmas Koustas.

12 MS. OLLILA: Your Honor, I'd ask that the ID  
13 be stricken on 41KK-7 and it be entered into full  
14 evidence.

15 MR. SHEKETOFF: No objection.

16 THE COURT: Full exhibit.

17 (Government's Exhibit 41KK-7 admitted.)

18 Q. 41KK-5, do you recognize that?

19 A. Yes.

20 Q. What is it?

21 A. .45 automatic ammunition.

22 Q. Was that seized at Kosmas Koustas's residence?

23 A. Yes.

24 MS. OLLILA: Your Honor, I'd ask that the ID  
25 be stricken on 41KK-5 and it be entered into full

1 evidence.

2 MR. SHEKETOFF: I have no objection.

3 THE COURT: Full exhibit.

4 (Government's Exhibit 41KK-5 admitted.)

5 Q. Sergeant Norris, 41KK-3. What is 41KK-3?

6 A. It's a mix. There's ammunition as well as  
7 three clips for them.

8 Q. Where were those items seized?

9 A. Residence of Kosmas Koustas.

10 MS. OLLILA: Your Honor, I'd ask that the ID  
11 be stricken on 41KK-3 and it be entered into full  
12 evidence.

13 MR. SHEKETOFF: No objection.

14 THE COURT: Full exhibit.

15 (Government's Exhibit 41KK-3 admitted.)

16 Q. And finally 41KK-4, do you recognize what that  
17 is?

18 A. Ammunition and two handgun clips.

19 Q. Where was that seized?

20 A. The residence of Kosmas Koustas.

21 MS. OLLILA: Your Honor, I'd ask that the ID  
22 be stricken on 41KK-4 and it be entered into full  
23 evidence.

24 MR. SHEKETOFF: I have no objection.

25 THE COURT: Full exhibit.

1 (Government's Exhibit 41KK-4 admitted.)

2 Q. Sergeant Norris, was there also a search  
3 warrant executed for any vehicles at Kosmas Koustas's  
4 residence?

5 A. Yes.

Q. Did law enforcement seize anything in that vehicle?

8 A. Yes.

9 Q. What was the vehicle that was searched?

10 A. A van.

11 Q. What year was the van?

A. The year I don't recall.

13 Q. That was not the GTI, the Volkswagen GTI;  
14 correct?

15 A. No, this was a Chevy van.

Q. What was seized in the Chevrolet van?

17           A.     Cellphones, marijuana. That's all that comes  
18 to mind.

19 Q. Let me show you what has been marked as  
20 Government's Exhibit 41KK-8. What is that?

A. This is a bag of marijuana.

22 Q. Where was it found?

23 A. Chevrolet van.

24 Q. Was it seized?

25 A. It was.

1 Q. Was it tested?

2 A. I don't recall.

3 MS. OLLILA: Your Honor, I'd ask that the ID  
4 be stricken on 41KK-8 and it be entered into full  
5 evidence.

6 MR. SHEKETOFF: I have no objection.

7 THE COURT: It's a full exhibit.

8 (Government's Exhibit 41KK-8 admitted.)

9 MS. OLLILA: Your Honor, the parties have  
10 stipulated that 41KK-8 was tested and tested positive  
11 for the presence of marijuana.

12 Q. Now, importantly, Sergeant Norris, when the  
13 marijuana was seized, it was not in this bag; correct?  
14 Was it in some other bag?

15 A. Yes.

16 Q. Now, let me show you what is 41KK-8, and I'd  
17 ask that you hold that up for the jury. Was that the  
18 bag that contained the marijuana?

19 A. Yes.

20 MS. OLLILA: Why don't you go toward the end  
21 so the jury can see it.

22 (Pause.)

23 Q. Are there any letters contained on the upper  
24 left portion of that bag?

25 A. Yes.

1 Q. What are those letters?

2 A. NH.

3 Q. And is there any other wording contained on  
4 the top part of that bag?

5 A. Yes.

6 Q. What are the words?

7 A. Grand Master.

8 Q. Now, NH, had you seen NH in your investigation  
9 before?

10 A. Yes.

11 Q. Is that consistent with the duffel bags that  
12 contained the marijuana that were seized in 2008 and  
13 2009?

14 MR. SHEKETOFF: Objection, speculation.

15 THE COURT: Sustained.

16 Q. Grand Master, what is that?

17 A. That would be a reference to the strain of  
18 marijuana.

19 Q. Sergeant Norris, in addition to the execution  
20 of a search warrant at 1465 Hooksett Road, did law  
21 enforcement execute a search at 140 Porter Street in  
22 Manchester?

23 A. 140 South Porter, yes.

24 Q. I'm sorry. And you indicated that was the  
25 residence of Kosmas Koustas's father?

1 A. Yes.

2 Q. I'm showing you what is 41L-2. Do you  
3 recognize what this is?

4 A. Yes.

5 Q. What is it?

6 A. A black duffel bag.

7 MS. OLLILA: Pull it out. Open it up for the  
8 jury. If you could go ahead and show it to the jurors  
9 at the end, too.

10 Q. Where was that seized?

11 A. 140 South Porter Street, Manchester.

12 MS. OLLILA: Your Honor, I'd ask that the ID  
13 be stricken on 41L-2 and it be entered into full  
14 evidence.

15 MR. SHEKETOFF: I have no objection.

16 THE COURT: Full exhibit.

17 (Government's Exhibit 41LL-2 admitted.)

18 Q. And finally, Sergeant Norris, let me show you  
19 what is marked as 41L-3.

20 A. Yes.

21 Q. Do you recognize what this is?

22 A. Yes.

23 MS. OLLILA: I'm going to take it out of the  
24 bag and I want you to show it to the jury. Sergeant  
25 Norris, if you can show the jurors at the end.

1           Q.     Sergeant Norris, was that contained inside  
2 that black duffel bag?

3           A.     Yes, it was.

4           Q.     It says "Diamond Kush" on one side "times 50."  
5 What is Diamond Kush?

6           A.     A strain of marijuana.

7           Q.     What is "times 50" a reference to?

8           A.     We believed it to be 50 pounds.

9           Q.     What about the word "Boston," what's that a  
10 reference to?

11          A.     Boston.

12           MS. OLLILA: Your Honor, I'd ask that the ID  
13 be stricken on 41L-3 and it be entered into full  
14 evidence.

15           MR. SHEKETOFF: I have no objection.

16           THE COURT: Full exhibit.

17           (Government's Exhibit 41LL-3 admitted.)

18           MS. OLLILA: Why don't you go ahead and take  
19 the stand, please.

20           (Pause.)

21           MS. OLLILA: Judge, Cindy is telling me that I  
22 have referred to a couple of exhibits incorrectly. I  
23 was referring to them as 41L, but it's 41LL. So those  
24 exhibits that I have referred to as 41L there should be  
25 two Ls, Judge.

1                   And I've also been told that I mistakenly  
2 referred to -- the acetone, Judge, I referred to as  
3 42JJ-3 and I'm being told it's 41JJ-3. And then there  
4 was another one, the Royal money counter, I referred to  
5 it as 42JJ-4 and it should be 41JJ-4. Sorry about that.

6                   I have no further questions for Sergeant  
7 Norris.

8                   THE COURT: This is a good time to take a  
9 brief morning break. And, again, members of the jury,  
10 we're going to take a brief morning recess. You're  
11 putting the transcripts in front of you as I see, and I  
12 remind you those are not evidence in this case. They  
13 were to assist you in assessing and weighing the  
14 evidence. Your recollection and interpretation of what  
15 is on those recordings is the evidence in the case.

16                  Sergeant Norris has also testified about what  
17 he thinks is on the audio recordings and what certain  
18 words mean. You are the factfinders in this case and  
19 you will determine the meaning of every word in these  
20 recordings, and you decide whether you agree with  
21 Sergeant Norris's testimony on the meaning of words used  
22 in these recordings. You can accept or reject any part  
23 of any witness's testimony. You are the sole  
24 factfinders.

25                  Don't speak, again, about this case among

1 yourselves. We will be back after the morning break.

2 (Jury left.)

3 BEFORE THE COURT

4 THE COURT: Quick question for counsel before  
5 we go. Some of the transcripts and text messages, are  
6 those in a separate exhibit?

7 MS. OLLILA: No, I did not offer them into  
8 evidence, Judge. I did not offer them.

9 THE COURT: All right. And just for  
10 clarification, the bag that the pot was in, Sergeant  
11 Norris identified it. Did you actually strike it,  
12 strike the ID? Did you intend that the bag would  
13 separately be admitted?

14 MS. OLLILA: No. The bag is part of the same  
15 marijuana. So when I struck the ID for the marijuana,  
16 it was contained in the bag.

17 THE COURT: All right. We'll be back after  
18 the morning break, sometime close to 11.

19 MS. OLLILA: Thank you, Judge.

20 (Recess taken.)

21 THE COURT: Attorney Sheketoff, go right  
22 ahead.

23 CROSS-EXAMINATION

24 BY MR. SHEKETOFF:

25 Q. Good morning, Sergeant.

1           A.     Good morning, sir.

2           Q.     Now, I want to start with some just basic  
3 baseline questions. At some point you discovered that  
4 Kosmas Koustas had a phone that was subscribed to his  
5 own name; correct?

6           A.     Yes.

7           Q.     And at a later part in the investigation, in  
8 March of 2014, you go up on that phone; correct?

9           A.     Yes.

10          Q.     So while you've played almost no conversations  
11 from that phone, you were up on that phone for 30 days,  
12 approximately, before Kosmas Koustas by fleeing from the  
13 pursuing police officer sort of -- and saying over the  
14 wire that he thinks he's being set up, he sort of blows  
15 your wire; correct?

16          A.     It comes to an end shortly after that, yes.

17          Q.     Well, you concluded based on your training,  
18 background, and experience that he's not going to be  
19 talking on this phone anymore, so you decide to arrest  
20 him basically?

21          A.     Arrest Kosmas Koustas?

22          Q.     Yeah. Well, when do you arrest him?

23          A.     He was arrested that day by, I believe, Derry  
24 Police Department. For the charges from this case, I  
25 believe he was arrested at a later date.

1           Q.     But he's at least arrested, alerted that he's  
2 facing some charges on this day, March 30th; correct?

3           A.     Yes, sir.

4           Q.     And, in fact, there's a -- okay. So you're up  
5 on that phone that was registered to his name for about  
6 a month, the month of March. Correct?

7           A.     Yes.

8           Q.     And during that month you capture numerous  
9 conversations between him and my client; correct?

10          A.     Yes.

11          Q.     Virtually one a day. Sometimes two a day.

12          A.     I don't know how many per day, no, but we did  
13 capture phone calls between the two of them.

14          Q.     Okay. Once you realize that Kosmas Koustas  
15 had this phone registered in his own name, you got the  
16 Metro PCS records for that phone? Are they Metro PCS or  
17 that's my client?

18          A.     I believe Kosmas Koustas's phone was Metro  
19 PCS, yes.

20          Q.     Okay. And the prosecutor pointed out certain  
21 entries on those records during your direct examination;  
22 correct?

23          A.     Yes.

24          Q.     And the phone company keeps those records for  
25 how long? Years? Decades?

1           A. I'm not sure. I believe it depends on the  
2 phone carrier.

3           Q. And you subpoenaed those records for what  
4 period of time?

5           A. Which records are we talking about, sir?

6           Q. Kosmas Koustas -- let's call it his registered  
7 phone, the phone that's under his name and doesn't  
8 change throughout this investigation. Correct?

9           A. Yes.

10          Q. I mean, on the last day of the wire,  
11 March 30th of 2014, he's still using that phone  
12 registered in his own name; correct?

13          A. Yes, I believe he was.

14          Q. And the records show that he had that phone  
15 before the first wire went up on a different -- a burner  
16 phone so to speak of Kosmas Koustas.

17          A. Yes.

18          Q. How many years did he have that phone  
19 registered to himself?

20          A. I would have to estimate. I would estimate  
21 over four years.

22          Q. And isn't it fair to say that during that  
23 entire period of time, that's 2011 to 2015, you could  
24 pick any day of any week of any month of any year and  
25 you would find a call between my client and Kosmas

1 Koustas. In other words, they talked to each other  
2 every day or virtually every day.

3 A. They talked prior to the wire, yes.

4 Q. No, I'm talking about virtually every day they  
5 talked. You had these records. There's a pattern.  
6 They talked 30 times a month, month after month after  
7 month. Correct?

8 A. Again, I don't know how many times they talked  
9 throughout the month.

10 Q. Could you pick a day of any week of any month  
11 of any year and find a day that they didn't talk to each  
12 other based on those phone records?

13 A. I'm not sure.

14 Q. Do you remember one of the things you do in  
15 your wiretap application for the very last wiretap --  
16 which is this Kosmas Koustas registered phone, the very  
17 last one you're going up on, is you explain to the judge  
18 who you are asking to issue this wiretap warrant, that  
19 there are hundreds and hundreds and hundreds of contacts  
20 between my client and this phone?

21 A. I may have, yes.

22 Q. All right. Now, how long did my client have  
23 that phone number that, when you were up on the Koustas  
24 phone, you actually got my client in a conversation with  
25 Kosmas Koustas?

1           A.     How many times?

2           Q.     No.    How long did my client -- that phone was  
3 registered to my client through his own name; correct?

4           A.     Yes.

5           Q.     And how many years did he have that number?

6           A.     I don't recall how long that phone was in  
7 service for.

8           Q.     Well, how many years worth of records did you  
9 get?

10          A.     I don't recall.

11          Q.     All right. So you do have 30 days worth of  
12 conversations approximately between my client and Kosmas  
13 Koustas; correct?

14          A.     Yes.

15          Q.     Those conversations are in Greek; correct?

16          A.     Yes, there was Greek portions. There might  
17 have been English portions as well, but there was Greek.  
18 I know that.

19          Q.     All right. And one of the things you are  
20 allowed to do in a wire room is to have a Greek  
21 translator present so that she or he can fill out the  
22 line sheets and tell you whether or not these  
23 conversations are pertinent or not pertinent; correct?

24          A.     Yes.

25          Q.     And you had such a person; correct?

1           A.     We did obtain a translator for the Greek  
2 language.

3           Q.     And Kosmas Koustas, do you know if his first  
4 language is Greek? In other words, was he born here or  
5 was he born somewhere else?

6           A.     I do not know.

7           Q.     Did you ever ask the Greek translator if he  
8 was the more fluent of the two in Greek between him and  
9 my client?

10          A.     I don't recall.

11          Q.     Do you know if he talked to anybody else  
12 during the course of this wire from beginning to end in  
13 Greek other than my client?

14          A.     He may have.

15          Q.     But you are not sure?

16          A.     I can't say for certain.

17          Q.     And you've chosen, it's fair to say, not to  
18 play a single recorded conversation that has my client's  
19 voice on it; correct?

20          A.     I've chosen that?

21          Q.     Well, have you heard one?

22          A.     No.

23          Q.     Do you know if the government intends to play  
24 one?

25          A.     I do not.

1           Q. Now, you also had a pole camera up in front of  
2 my client's bar or house of pizza, whatever you want to  
3 call it, on Amory Street; correct?

4           A. Yes, sir.

5           Q. That pole camera went up when?

6           A. I don't recall the date that it went up.

7           Q. Is there a record somewhere that would tell  
8 you when it went up?

9           A. Not that I'm aware of, no.

10          Q. So you guys -- by you guys I mean the New  
11 Hampshire State Police put it up and no one recorded  
12 down when it was that it went up for the first time?

13          A. I don't believe it was recorded, no.

14          Q. I think you told us on Friday that it was up  
15 in March of 2013.

16          A. I believe it was up probably right around that  
17 time. That sounds correct, but I'm not a hundred  
18 percent certain.

19          Q. And you say it was up for at least a year?

20          A. I would say so, yes.

21          Q. And it records constantly?

22          A. Yes.

23          Q. So you actually have 24 hours surveillance  
24 from at least March of 2013 for at least a year until  
25 March of 2014.

1           A. Yes. It was probably a little longer than  
2 that, but, yes, that's correct.

3           Q. And I believe you told us on Friday that the  
4 camera doesn't work that well in the dark?

5           A. No, I did not.

6           Q. Okay. So you capture images that occur once  
7 the sun is set?

8           A. Yes.

9           Q. So if some, for instance, cooperating witness  
10 were to tell you that I had a meeting with Alkis Nakos  
11 right in front of the pizza store, would you look at the  
12 pole camera to see if you captured any such meeting?

13          A. Yes, we would review it.

14          Q. During the course of your investigation, did  
15 you ever review pole camera footage for the period of  
16 December or January, December 2013 into January 2014,  
17 looking to see if you found somebody by the name of  
18 Sweeney captured on the pole camera footage?

19          A. No, I did not.

20          Q. You didn't look?

21          A. That's correct.

22          Q. Do you know if anyone has looked?

23          A. To identify David Sweeney?

24          Q. Yeah.

25          A. No.

1           Q.     And you also had a GPS device placed at some  
2 point in time on Kosmas Koustas' Volkswagen; correct?

3           A.     Yes, sir.

4           Q.     And as I understand it, and correct me if I'm  
5 wrong, that went on sometime in October of 2013?

6           A.     No, sir.

7           Q.     When did it go on?

8           A.     I believe it was the beginning of November.

9           Q.     All right. So these trips that we've talked  
10 about to meet this person in Worcester -- and, by the  
11 way, can we refer to that person as Mr. Seiger? That's  
12 who you believe it to be; correct?

13          A.     At the time that's who we believed it to be.

14          Q.     So whether it's him or somebody else, can we  
15 refer to him as Seiger. Did the GPS device -- it was up  
16 and operating on December 5th, December 6th, and  
17 December 7th of 2013?

18          A.     Yes, I believe it was.

19          Q.     And that gives you, it's fair to say, in live  
20 time notice of where that vehicle is?

21          A.     Yes, sir.

22          Q.     At least on one of those days you told us he  
23 used a van; correct? Mr. Koustas.

24          A.     No, sir.

25          Q.     What did he use? He used some other vehicle?

1           A.     Yes.

2           Q.     What vehicle was that?

3           A.     It was a small sedan.

4           Q.     So on one of the days he used a small sedan.

5           Which day was that in December of 2013?

6           A.     I believe he was using the sedan on  
7 December 7th.

8           Q.     December 7th. So you couldn't follow him in  
9 realtime on December 7th; correct?

10          A.     You could not follow him because he was in  
11 another vehicle; correct.

12          Q.     Right. The GPS device might have been working  
13 fine. It was just not in the vehicle he was using;  
14 correct?

15          A.     Yes, sir.

16          Q.     How about on December 6th? Was the GPS  
17 working on December 6th? Was he driving around in the  
18 Volkswagen?

19          A.     I don't recall.

20          Q.     December 6th is the day that the big meeting  
21 gets cancelled, that he talks to Seiger at 4 or 5:00 in  
22 the afternoon and says it's off. I'm not coming down to  
23 pick up the stuff, basically. Correct?

24          A.     Yes.

25          Q.     So you mean you don't know where his car was

1 on December 5th? You don't know if it was in Worcester  
2 that morning or if it was in Manchester that morning?  
3 You don't know when he left Manchester or if he ever  
4 left Manchester on December 6th. You have no knowledge  
5 whatsoever of his positioning on December 6th?

6 A. Yes.

7 Q. That's true?

8 A. That's correct.

9 Q. And is that because you didn't bother to look  
10 at the stuff or it's because he was using a different  
11 car?

12 A. That's because I don't remember right now,  
13 sir.

14 Q. Okay. Is there something that could refresh  
15 your memory as to where he was on December 6th?

16 A. There may be.

17 Q. And, by the way, you don't -- you can use  
18 something besides a GPS device to figure out where  
19 somebody is on December 6th or any other date; correct?  
20 You just need the cell tower records from the phone  
21 company; correct?

22 A. You could obtain tower information post from  
23 the phone company, yes.

24 Q. Didn't you do that in this case?

25 A. I don't recall.

1           Q.     I want to go to the first big day,  
2 October 23rd of 2013. Now, do you recall that there is  
3 a telephone conversation that you played -- and by you,  
4 I mean while you were on the stand that was played, the  
5 jury got to listen to it, and you described what you  
6 thought it meant. And that was between a Mr. Blevens  
7 and Kosmas Koustas. Do you remember that call?

8           A.     I remember there was a phone call, yes.

9           Q.     At 6:32 p.m. from Mr. Blevens to Mr. Koustas,  
10 and there's this big discussion about getting him some  
11 Molly because he wants it?

12          A.     That sounds correct.

13          Q.     Do you remember there was a second call where  
14 they talk about the same thing, the Molly, and Mr.  
15 Koustas says to him, according to you, the MF boss is at  
16 the Red Sox game.

17          A.     Yes, I remember that portion of the  
18 conversation.

19          Q.     So we have call number one between Blevens and  
20 Koustas. Blevens is ordering Molly. And then we have a  
21 little while later call number two between Blevens and  
22 Koustas, and Koustas says, not going to be able to  
23 deliver. My boss -- that's the way you heard it -- is  
24 at the Red Sox game. Correct?

25          A.     Yes.

1           Q.     Are you sure he says my boss and not the  
2 mother F'er bounced? In other words, left, bounced?

3           A.     No.

4           Q.     You hear boss?

5           A.     Boss; correct.

6           Q.     You don't hear bounced?

7           A.     No, sir, I hear boss.

8           Q.     Would "bounced" in that context be a word to  
9 use -- and this is Kosmas Koustas speaking. I can't get  
10 it for you because the MF'er bounced. You would know  
11 what that meant; correct?

12          A.     Yes, if that was used, yes.

13          Q.     Yeah, he disappeared on me. He left, he went  
14 somewhere. And you hear boss, not bounced.

15          A.     Yes, sir.

16          Q.     In the entire wiretap from beginning to end do  
17 you hear Kosmas Koustas say the word "boss" on any other  
18 occasion?

19          A.     Not that I recall.

20          Q.     In any event, do you have one iota of evidence  
21 that my client was at a Red Sox game on October 23rd of  
22 2013?

23          A.     I do not.

24          Q.     One little piece, one little nugget of any  
25 kind, that he was at a Red Sox game on October 23rd of

1       2013?

2           A.     No, sir.

3           Q.     All right. Now, you told us that there was a  
4 phone call the next morning from the Metro PCS records,  
5 the next morning, October 24th, between Kosmas Koustas  
6 and my client -- it's on the records. You're not up on  
7 that wire for either of their phones subscribed to them,  
8 so you don't know what's in it, but there's a  
9 conversation; correct?

10          A.     I believe so.

11          Q.     And that's the conversation you were  
12 suggesting was the conversation where Koustas learns  
13 from my client about the availability of the Molly and  
14 then later in the day calls Blevens and says I've got it  
15 now. Correct?

16          A.     Yes.

17          Q.     That's the inference you want people to draw;  
18 correct?

19          A.     That's what I believed.

20          Q.     Yeah. Even though every day of every week my  
21 client is talking to Kosmas Koustas, not just the 24th,  
22 the 23rd, the 22nd, the 20th, the 25th, November 2nd,  
23 November 8th, December 3rd, that's what you focus on,  
24 that phone call. Correct?

25          A.     I answered the question, yes.

1           Q.     But are there phone calls as Kosmas Koustas is  
2 driving back on October 23rd from his pickup with Seiger  
3 between the two phone calls where he says, I will see if  
4 I can get it for you, can't get it for you? Are there  
5 phone calls in between that on either his 603 number or  
6 the number you're up on?

7           A.     I don't believe so, no.

8           Q.     You don't believe so?

9           A.     That's correct.

10          Q.     Don't you know that there were -- didn't you  
11 repeat that in your affidavit for the very last wiretap?

12          A.     I'm sorry, I don't understand what the  
13 question is.

14          Q.     Don't you, in fact, know that there were a  
15 whole bunch of phone calls between the first phone call  
16 with Blevens where he says I will see if I can get it  
17 for you, Blevens says I want it, and the second phone  
18 call with Blevens two hours later where Blevens says got  
19 it, and Koustas says, nah, the guy bounced, or my boss  
20 left. He's at a Red Sox game. Don't you know that  
21 there are lots of phone calls between those?

22          A.     I do not.

23          Q.     Would it be a problem for your theory if there  
24 were lots of phone calls between those?

25          A.     I don't believe so, no.

1           Q. You don't believe so. It wouldn't matter who  
2 he called between the time he said I will look for it  
3 and the time he said I can't find it. It wouldn't  
4 matter who he called; correct?

5           A. It would if you had that information.

6           Q. Well, didn't he call Brandon Lachance for four  
7 minutes and eight seconds at 7:44 p.m. in between the  
8 two phone calls to Blevens?

9           A. I would have to review the phone records. I'm  
10 not sure.

11          Q. You're really not sure?

12          A. Again, I'm not sure, sir.

13          MR. SHEKETOFF: Pray the Court's indulgence.

14          THE COURT: Take your time.

15          (Pause.)

16          MR. SHEKETOFF: May I approach, your Honor?

17          THE COURT: You may.

18          Q. My paper management is not as good as it  
19 should be. Does that refresh your memory?

20          A. I haven't read it, sir. Would you like me to?

21          Q. Please.

22          (Pause.)

23          A. Okay.

24          Q. All right. Between call number one with  
25 Blevens, I will look for it for you, and two hours

1 later, call number two with Blevens, the guy is at the  
2 Red Sox game. Does he call Brandon Lachance?

3 A. On October 23rd he does, yes.

4 Q. Yeah. Between those two phone calls, he calls  
5 Brandon Lachance. He's on his way back from picking up  
6 with Seiger; correct?

7 A. Yes.

8 Q. And he calls Brandon Lachance. That's a name  
9 that you know from other investigations; correct?

10 A. Yes, sir.

11 Q. That's someone you believe had -- was involved  
12 in the drug business. Whether it's true or not, that's  
13 someone you believed was involved in the drug business;  
14 correct?

15 A. Yes, sir.

16 Q. And doesn't he also call his girlfriend  
17 numerous times during those two phone calls?

18 A. I don't recall, sir.

19 Q. Was his girlfriend's name Jennifer Suk Day?

20 A. Yes.

21 Q. Do you remember that her number was  
22 603-851-4001?

23 A. I do not.

24 Q. Isn't there also another phone call to another  
25 603 number during that same period of time for

1 two minutes and 15 seconds, 703-9994, a 603 number. Do  
2 you know who that belongs to?

3 A. No.

4 Q. So at some point in time, you had all this  
5 information because you have his phone record from the  
6 phone subscribed to him and you have the wire up on the  
7 phone that is his burner phone at the time, and you know  
8 exactly, at least from those two phones -- this is  
9 assuming he doesn't have a third phone. You know  
10 exactly from those two phones who he calls during this  
11 period of time between the two Blevens phone calls. You  
12 had a chance to look at that before you got on the  
13 witness stand today. Correct?

14 A. Yes.

15 Q. And you are unaware of who it is that he  
16 called between those two phone calls other than Brandon  
17 Lachance?

18 A. Yes.

19 Q. And the reason you know he called Brandon  
20 Lachance is because I showed it to you in your  
21 affidavit; correct?

22 A. Yes.

23 Q. So at some point you did look at this stuff.

24 A. Yes.

25 Q. Weren't you at all curious about the

1 two-minute-and-15-second phone call that he made in  
2 between these two Blevens phone calls?

3 A. I don't know, sir.

4 Q. So how was it that he learned that his boss,  
5 my client, was at the Red Sox game?

6 A. How did he -- I'm sorry, could you ask it  
7 again.

8 Q. Yeah. How did Kosmas Koustas learn that his  
9 boss, who you say is my client, was at the Red Sox game  
10 between the first Blevens call and the second Blevens  
11 call on October 23, 2013?

12 A. I don't know, sir.

13 Q. Do you think he learned it from Brandon  
14 Lachance?

15 A. I don't know.

16 Q. Do you think Brandon Lachance told him, hey, I  
17 don't got it right now.

18 A. No, I don't believe that was the case.

19 Q. You prefer the inference that the next morning  
20 he found out because he got a call with my client.  
21 That's the inference you prefer.

22 A. Yes.

23 Q. So December 5th he goes to see -- it's a  
24 different phone now, but he goes to see Seiger in  
25 Worcester. It's the same voice that you're listening

1 to; correct?

2 A. Yes.

3 Q. And do you know what car he's driving?

4 A. I don't.

5 Q. Were you able to GPS him down there?

6 A. I don't recall.

7 Q. And there's some pickup of some sort and he  
8 drives back to New Hampshire; correct?

9 A. Yes.

10 Q. And then you say there's a phone conversation  
11 between my client and Kosmas Koustas that lasts  
12 39 minutes on the morning of December 6th, and it's your  
13 suggestion that that's where Kosmas Koustas learns that  
14 there's going to be no pickup on December 6th, that  
15 Seiger is not going to be able to deliver; correct?

16 A. That's what I believed.

17 Q. And that phone call is at what time in the  
18 morning?

19 A. I would have to review the record again to  
20 give you a time.

21 Q. Was it 10:41? First there's an outgoing call  
22 from Koustas to my client at 9:58, and then my client's  
23 in a big hurry to get back to him, so he calls him back  
24 at 10:41, and they're on the phone you said for  
25 39 minutes or so. Correct?

1           A. I would have to review the phone record.

2           MR. SHEKETOFF: May I approach, your Honor.

3           THE COURT: You may.

4           Q. The first paper is the marked stop. The first  
5 page is the October stop.

6           A. I'm sorry, sir, I couldn't hear you.

7           Q. So the first couple of pages is October, but  
8 then it goes to December 5th.

9           A. Okay. December 5th.

10          Q. So I'm suggesting at 10:41 a.m. there's an  
11 incoming call that you talked about on direct  
12 examination between the phone number registered to Mr.  
13 Koustas and the phone number registered to my client  
14 that lasts 39 minutes and one second; correct?

15          A. Are you referring to the 5th, sir, or the 6th?

16          Q. I'm sorry, the 6th.

17          A. On the 6th there is a call at 10:41 a.m. that  
18 lasted 39 minutes, yes.

19          Q. And can you tell from that record if they're  
20 on the phone together for that entire 39 minutes or he  
21 puts my client on hold and picks up another call?

22          A. I do not know.

23          Q. Is there some sort of indication that there's  
24 a call waiting thing there?

25          A. There is special features that indicates

1 calling line ID presentation. I'm not sure what that  
2 means.

3 Q. In any event, whether he's on the phone for  
4 39 minutes or some portion of that, that's the call  
5 you're referring to where my client must be telling  
6 Kosmas Koustas that the deal is off and there's going to  
7 be no pickup on December 6th. Correct?

8 A. Yes.

9 Q. That's your suggestion; correct?

10 A. Yes, it is.

11 Q. Okay. Because do you recall that the call to  
12 Mr. Seiger or whatever his real name is where Kosmas  
13 Koustas -- and it was played for the jury. The two of  
14 them talk, Kosmas Koustas and Seiger, and Seiger says,  
15 no, I don't have it yet, and Koustas says it's off.  
16 Right?

17 A. Yes.

18 Q. That's at 4:57, almost 5:00. So there's this  
19 call with my client at 11:00 in the morning, and then  
20 there's Koustas telling Seiger it's off at 5:00.  
21 There's six hours in between; correct?

22 A. I would have to confirm the times, but, yes,  
23 there was a call with Seiger.

24 Q. All right. Well, do you have that book in  
25 front of you?

1 A. No, it's on the desk, sir.

2 MR. SHEKETOFF: May I approach, your Honor?

3 THE COURT: Yes.

4 Q. Okay. So this was on December 6th. There's a  
5 call that was played for the jury between the person we  
6 are calling Mr. Seiger and Kosmas Koustas --

7 A. Yes.

8 Q. -- where they cancelled their meeting for that  
9 day.

10 A. Yes.

11 Q. Can you see from the transcript that it's  
12 4:57? That's when the call starts?

13 A. What's the number, sir?

14 Q. I do not know. I don't have it pulled out. I  
15 can't find it.

16 THE COURT: Mr. Sheketoff, I think your  
17 associate may --

18 Q. 39U. That's at 4:57 p.m. Correct?

19 A. Yes, sir.

20 Q. So there's a phone call between Koustas and my  
21 client at 10:41 a.m. Let's call it 11:00 in the  
22 morning. And then there's a phone call between Koustas  
23 and Seiger where he tells Seiger deal is off. That's at  
24 approximately 5:00 at night. So six hours have passed.

25 A. Approximately, yes, sir.

1           Q.     Where is Mr. Koustas during this period of  
2 time?  Is he in Massachusetts, hanging out, waiting for  
3 the deal to happen, or is he living up in Manchester,  
4 New Hampshire?  I mean, where is he after he has this  
5 phone conversation with my client at 11:00 in the  
6 morning?  Where is he?

7           A.     I don't recall, sir.

8           Q.     You mean, you didn't ever look to see if he  
9 was in Massachusetts during this whole period of time?  
10 Your theory is that my client tells him it's off.  11:00  
11 in the morning, it's off.  You're not curious to see  
12 whether or not he drove to Massachusetts to get ready  
13 for this thing or not?

14          A.     We may have checked, we may not have.  I don't  
15 recall.

16          Q.     So as you sit here today, you can't tell me,  
17 either from the GPS records or from the cell tower  
18 records, whether Koustas was even in Manchester, New  
19 Hampshire, or was already in Massachusetts after this  
20 phone call with my client.  Correct?

21          A.     I did not, sir.

22          Q.     You don't know.

23          A.     That's correct, sir.

24          Q.     But it's possible to find this out; correct?

25          A.     Yes.

1 Q. I mean, this data exists; correct?

2 A. Yes. We may have or may not have known at the  
3 time.

4 Q. All right. Because it wouldn't make any sense  
5 whatsoever for Mr. Koustas to leave Manchester and drive  
6 to Massachusetts after 11:00 in the morning if my client  
7 had just told him the deal's off, it's not happening;  
8 correct?

9 A. I don't know.

10 Q. Well, would that make sense to you? That he  
11 would drive down to Massachusetts anyhow after my client  
12 just told him the deal's off?

13 A. He may. He worked in Massachusetts. I don't  
14 know.

15 Q. So if a meeting gets cancelled at 11:00 in the  
16 morning, who waits till 5:00 at night to tell somebody  
17 that the meeting has been cancelled?

18 A. I do not know.

19 Q. Now, are there text messages between Mr.  
20 Seiger or whoever he is and Kosmas Koustas between 11:00  
21 in the morning when my client, according to your theory,  
22 tells him that the deal is off and 5:00 at night when  
23 Seiger is informed by Mr. Koustas in a tape-recorded  
24 conversation that we've all heard that the deal is off.  
25 Are there text messages between Seiger and my client?

1           A.    We were not allowed to receive text message  
2 content. Whether or not text messages were exchanged, I  
3 would have to review a record to let you know that.

4           MR. SHEKETOFF: May I approach, your Honor?

5           THE COURT: You may.

6           (Pause.)

7           THE WITNESS: Okay, sir.

8           Q.    So were there text messages back and forth  
9 between them?

10          A.    Yes. It appears that there was approximately  
11 five text messages, four were incoming, one outgoing.  
12 First one appears to be at approximately 12:09 and the  
13 last one appears to be 12:21.

14          Q.    All right. So there's a flurry of activity  
15 between Seiger and Koustas between a little after 12 and  
16 almost 12:30; correct?

17          A.    Four incoming text messages it looks like and  
18 one outgoing from Koustas's phone.

19          Q.    So Koustas, according to your theory, has just  
20 learned that the deal is off. He exchanges text  
21 messages with Seiger later that morning or into the  
22 early afternoon, and then he has to call him at 4:57 to  
23 tell him the deal is off? What sense does that make?

24          A.    I do not know what the content of the text  
25 messages was.

1           Q. Well, he was leaving Seiger on ice all day  
2 just for the fun of it?

3           A. I don't know.

4           Q. Okay. So I'm sure you wanted to know what was  
5 in those text messages. Correct?

6           A. Yes.

7           Q. Because if at 12 to 12:30 they're still  
8 talking about the deal, your theory is out the window;  
9 correct?

10          A. It may be.

11          Q. Even that won't put your theory out the  
12 window, that phone call at 10:49 telling him that the  
13 deal was off.

14          A. Not knowing what the content of the messages  
15 was, I can't say.

16          Q. All right. So you wanted to know what the  
17 content was; correct?

18          A. Yes.

19          Q. And you made an affidavit to the court to get  
20 historical text messages from this phone from the phone  
21 company; correct?

22          A. Historical text messages?

23          Q. Yeah. Okay. Did you apply to a U.S. district  
24 court judge to get the content of these messages? In  
25 other words, you've told us that you needed some sort of

1 dirty text in order to stay up on text messages. You  
2 didn't have a dirty text, so you had to stop after the  
3 first 30 days of collecting text messages. So you've  
4 told us that. Now my question is do you have another  
5 method, not in realtime but after time has passed, to  
6 ask a federal judge to issue an order to get historical  
7 text messages.

8 A. Yes, you can do that.

9 Q. And you did it in this case; did you not?

10 A. I don't recall.

11 MR. SHEKETOFF: May I approach, your Honor?

12 THE COURT: You may.

13 MS. OLLILA: Judge, may we approach sidebar on  
14 this issue.

15 AT SIDEBAR

16 MS. OLLILA: I'm not sure what counsel is  
17 trying to claim. I think he's trying to claim that the  
18 United States got the content of the text messages for  
19 this number for the person he's calling Seiger. They  
20 were not received, so I'm not sure what counsel's  
21 referring to. We got pen register information, but  
22 that's not content.

23 MR. SHEKETOFF: I'm referring to this, your  
24 Honor, paragraph 116. This is his affidavit to go up on  
25 target telephone number five, which is the Koustas

1 registered phone.

2 (Pause.)

3 THE COURT: Okay. You can look at the  
4 references content.

5 (Pause.)

6 THE COURT: You can cross him with this. Make  
7 sure my name -- I just don't want the jury to hear my  
8 name involved in anything.

9 MS. OLLILA: Right.

10 THE COURT: Okay. Go ahead.

11 MS. OLLILA: Do you want to give him the  
12 entire affidavit or just this page?

13 MR. SHEKETOFF: This is the only relevant  
14 paragraph, but if you want me to, I will give him the  
15 entire affidavit. The trouble is I pulled it apart.

16 THE COURT: So if you have a clean copy of the  
17 whole affidavit, maybe you could just point him to that.

18 MR. SHEKETOFF: Sure. Do you have a clean  
19 copy?

20 MS. OLLILA: Not with me.

21 MR. SHEKETOFF: I don't. That's my problem.

22 THE COURT: I think you can just let him read  
23 the paragraph.

24 MS. OLLILA: Thank you, Judge.

25 IN OPEN COURT

1 THE COURT: Go ahead, Attorney Sheketoff.

2 MR. SHEKETOFF: May I approach, your Honor.

3 THE COURT: Yes.

4 Q. I'm going to show you this portion of your  
5 affidavit, and if you want to look at any other portion,  
6 the government will help me pull it out from somewhere.  
7 But I'm directing your attention to paragraph 116. If  
8 you want to see more, that's fine.

9 (Pause.)

10 A. Yes, sir.

11 Q. So does that refresh your memory that on  
12 December 9th of 2013, three days after December 6th, you  
13 asked the U.S. District Court judge for permission to  
14 get historical text messages.

15 A. Yes.

Q. And did you get them?

17 A. We did.

Q. So what do these text messages say?

19 A. There's a text message here for December 5th.  
20 Would you like me to read that one?

21 Q. No. I'm talking about the December 6th text  
22 messages between Seiger and Koustas between 12 and 12:30  
23 that day.

24 A. I don't see any of those text messages here,  
25 sir.

1           Q.     Okay.  So you don't recount them in your  
2 affidavit.  This is the affidavit to go up on the  
3 Koustas registered phone?

4           A.     Yes.

5           Q.     But I'm not talking about that.  You asked the  
6 district court judge on December 9th of 2013 to let you  
7 get historical data on the Koustas phone that -- his  
8 burner phone that was getting text messages back and  
9 forth from Seiger, and you just told us you did get some  
10 text messages.  You were about to read one from December  
11 5th.  I want to know what text messages you got on  
12 December 6th.  What are those?  What do those say  
13 between 12 and 12:30?

14          A.     I do not know.

15          Q.     Do they exist somewhere?

16          A.     I do not know.

17          Q.     Now, when you debrief somebody, like -- well,  
18 in this case let's say Nicholas Champagne or Jonathan  
19 Venturini.  Do you tape-record those debriefings?

20          A.     I did not.

21          Q.     Is there a reason you choose not to  
22 tape-record those debriefings?

23          A.     No.

24          Q.     Then why aren't they tape-recorded?  Then  
25 everyone would know exactly what was said.

1           A. I don't know why we did not.

2           Q. Well, was it a conscious choice or just an  
3 accident?

4           A. Neither. I don't know why we did not.

5           Q. What is your normal practice?

6           A. To take notes and generate a report.

7           Q. Now, let's take Jonathan Venturini. I'm not  
8 suggesting there's anything wrong with this. Most  
9 witnesses have a debriefing, correct, and then a trial  
10 prep; correct?

11          A. Yes.

12          Q. In other words, right before you are going to  
13 put him on trial, you go over with him, these are the  
14 questions I'm going to ask you, this kind of stuff;  
15 correct?

16          A. Yes.

17          Q. This is done with all kinds of witnesses, not  
18 just cooperators, and this is what's expected that  
19 lawyers will do; correct? Prepare their witnesses for  
20 their testimony?

21          A. Again, yes.

22          Q. So at these trial prep sessions, let's talk  
23 about Venturini. There was one for Venturini; correct?

24          A. Yes.

25          Q. And there was one for Champagne; correct?

1           A.     Yes.

2           Q.     Does anyone take notes?

3           A.     I don't know if anybody took notes at those.

4           Q.     And why not?

5           A.     I don't know.

6           Q.     Is there a policy never to debrief the same  
7 person twice with someone actually taking notes or  
8 tape-recording what they have to say?

9           A.     I'm not aware of any.

10          Q.     Did you as the lead agent in this case ever  
11 debrief any one person twice? Putting aside trial prep,  
12 did you ever go back and have a second conversation with  
13 any person?

14          A.     I don't believe that we did.

15          Q.     Is there a reason that neither Nicholas  
16 Champagne or Jonathan Venturini were actually talked to  
17 on two separate occasions to see if they could tell the  
18 same story twice?

19          A.     Were they?

20          Q.     Yeah.

21          A.     No, not to my knowledge.

22          Q.     Now, in one of the tape-recordings we heard  
23 yesterday, Blevens or Fowle, I can't even remember which  
24 one now, talks about his house being broken into;  
25 correct?

1 A. Yes.

2 Q. Do you remember which one it was? Was it  
3 Blevens or Fowle?

4 A. Fowle, yes.

5 Q. Was that ever reported to law enforcement?

6 A. I don't know. I don't believe so, but I'm not  
7 certain.

8 Q. But the burglary at my client's house was  
9 reported to law enforcement; correct?

10 A. Yes.

11 Q. And, in fact, you know from collecting the  
12 numerous documents that you collected in this case that  
13 somebody actually got identified because they left blood  
14 behind when they cut themselves on the glass when they  
15 broke in. There's a DNA match to a person; correct?

16 A. I don't know.

17 Q. You don't know. Did you know that the builder  
18 who was on the stand on Friday had been sued civilly by  
19 my client?

20 A. I found out just before trial, yes.

21 Q. You mean he told you that just before trial?

22 A. No.

23 Q. Did you get the records for that? In other  
24 words, did you go to the courthouse and get the records  
25 for that lawsuit?

1 A. I did not.

2 Q. Have you seen the records for that lawsuit?

3 A. No. That was the first time I had ever seen  
4 Mr. Gibbons, the day he testified.

5 Q. Do you remember the name of the FBI agent that  
6 the prosecutor said to him, did so and so come to visit  
7 you?

8 A. Yes.

9 Q. And he said I don't really recall the name of  
10 the agent?

11 A. Yes.

12 Q. What was the name of that agent?

13 A. Mark Alford.

14 Q. Was Mark Alford's business card found in my  
15 client's house when his house was searched in 2014?

16 A. I don't recall.

17 Q. Have you seen pictures of what the addition  
18 looked like?

19 A. I don't remember seeing any, no.

20 Q. Were you ever in the house?

21 A. No.

22 Q. Do you know if the house was luxuriously  
23 furnished or had almost nothing in it?

24 A. I don't know.

25 Q. Now, you gathered a whole bunch of my client's

1 financial records; correct?

2 A. There was quite a bit of financial  
3 documentation, yes.

4 Q. Are you a forensic accountant? Are you a  
5 specialist in analysis of financial records?

6 A. No.

7 Q. Does the New Hampshire State Police to your  
8 knowledge have a forensic accountant?

9 A. I don't know.

10 Q. Do you know if the U.S. Attorney's Office has  
11 a forensic accountant or a financial expert?

12 A. I do not.

13 Q. Have you ever participated in a tax  
14 prosecution?

15 A. No.

16 Q. My client had bank accounts in his name.  
17 You've seen the records; correct?

18 A. I believe I have.

19 Q. And, by the way, there's a thing called a CTR;  
20 correct? A cash transaction report.

21 A. Yes.

22 Q. And if you deposit more than \$10,000, you  
23 withdraw more than \$10,000, you pay somebody more than  
24 \$10,000, a cash transaction report is supposed to be  
25 generated; correct?

1 A. Yes.

2 Q. With a bank it's very likely to be generated;  
3 correct?

4 A. With the what, I'm sorry?

5 Q. The bank.

6 A. The ones that generate that?

7 Q. Well, the bank -- for instance, the accountant  
8 that we saw on the witness stand, my client's  
9 accountant, his understanding was that if you got  
10 \$10,001 and a fee, you didn't have to file a cash  
11 transaction report. Would he have to file a cash  
12 transaction report if he got more than \$10,000 as a fee?

13 A. I believe so, but I'm not certain.

14 Q. But certainly whether he filed it or didn't  
15 file it, the bank always files it; correct?

16 A. To my knowledge, yes.

17 Q. And was my client structuring his funds so  
18 that cash transaction reports were not generated?

19 A. I don't know.

20 Q. Didn't you see a lot of cash transaction  
21 reports under his name?

22 A. I believe I did, yes.

23 Q. Okay. Isn't it common knowledge out there, if  
24 you want to hide your business from the IRS, you don't  
25 deposit more than \$10,000 at a time? You don't withdraw

1 more than \$10,000 at a time? And you don't pay for a  
2 Mercedes with more than \$10,000 in cash?

3 A. Yes.

4 Q. You've seen his Mercedes records; correct?

5 A. I can't recall them, no.

6 Q. Well, do you know if they've been gathered?  
7 Did you cause them to be gathered?

8 A. I don't recall if the Mercedes records were  
9 requested by me.

10 Q. Do you know at the time that he -- do you know  
11 if he's married?

12 A. I do not.

13 Q. Do you know if he has any children?

14 A. Yes.

15 Q. All right. That child is basically a year  
16 old?

17 A. That sounds about right.

18 Q. All right. So for the vast majority of this  
19 investigation, he was not married and had no kids;  
20 correct?

21 A. To my knowledge, yes.

22 Q. How big is this house that he put the addition  
23 on? Is it a 5,600-square-foot house? Is it a  
24 2,500-square-foot house? How big is it with the  
25 addition on it?

1           A. I'm not sure. I'd estimate somewhere between  
2 2,000 and 2,500. That would be an estimate.

3           Q. If you won \$80,000 or so at a jackpot at  
4 Foxwoods and you are a single male working at a pizza  
5 place, you wouldn't spend it on a fancy car?

6           A. Me? No.

7           Q. Okay. And therefore if you do, you're a  
8 criminal?

9           A. No.

10          Q. You know whether these cars were leased or  
11 bought; correct?

12          A. Yes. There should be a record of that.

13          Q. Yes, there's records; correct?

14          A. There should be, yes.

15          Q. You know how to access those records. You  
16 know exactly how much each one of these cars cost or  
17 didn't cost; correct?

18          A. Yes, I believe we have that information.

19          Q. So when you were part of the debriefing with  
20 Mr. Champagne, was he told in your presence that the  
21 government would cut -- would make a motion to the Court  
22 to reduce his supervised release to a year and a half?

23          A. I don't recall that, no.

24          Q. You're saying it didn't happen or you don't  
25 recall it?

1 A. I don't recall it.

2 Q. And there's no tape-recording of that;  
3 correct?

4 A. Correct.

5 Q. By the way, did you gather the records for the  
6 purchase of that home that he put the addition on?

7 A. We may or may not have.

8 Q. Do you know if it was no money down or it was  
9 a million dollars down?

10 A. I don't.

11 Q. You've seen the Foxwoods records?

12 A. Yes, I've seen some of the Foxwoods records.

13 Q. Have you talked to a representative of  
14 Foxwoods to try and translate those records into  
15 English?

16 A. I don't believe I did, no.

17 Q. He went to Foxwoods on an extremely regular  
18 basis, did he not?

19 A. I would say that's fair.

20 Q. And he often brought with him thousands of  
21 dollars to buy in; correct?

22 A. I don't know.

23 Q. Well, you've seen the records, haven't you?

24 A. I have.

25 Q. 17,750, 10,500.

1                   MS. OLLILA: Objection, your Honor, if he's  
2 referring to an exhibit that -- he can enter those  
3 records into evidence, and I will stipulate to their  
4 admission, counsel. Do you want me to get those for  
5 you?

6                   THE COURT: Overruled. Go ahead and ask.

7                   Q. That doesn't refresh your memory in any way?

8                   A. I didn't hear what you said, sir.

9                   Q. Christopher Ranfos was stopped with my client;  
10 correct?

11                  A. Yes.

12                  Q. You know that from your role in this  
13 investigation; correct?

14                  A. Yes.

15                  Q. And we played one phone conversation for the  
16 jury with Christopher Ranfos talking to Kosmas Koustas;  
17 correct?

18                  A. Yes.

19                  Q. We just heard that today. And you know that  
20 Mr. Ranfos is an HVAC guy, don't you?

21                  A. Yes.

22                  Q. What does an HVAC guy do? Does he do heating  
23 and air conditioning and things like that?

24                  A. Yes.

25                  Q. And you know that Kosmas Koustas was actually

1 rehabbing an apartment; correct?

2 A. We knew that they were doing work, yes.

3 Q. And Ranfos calls him up and says: I'm going  
4 to come over to check out the heat. And you say that  
5 that's a reference to buying marijuana?

6 A. Heat, yes, I testified that he -- I believed  
7 it to be a reference to marijuana.

8 Q. Is it within the realm of possibility that  
9 it's a reference to checking out the heat?

10 A. In this particular case, no, I didn't think it  
11 was a reference to actual HVAC work.

12 Q. Is there anywhere else on this wire or any  
13 other wire in connection with this case that anyone  
14 refers to marijuana as heat?

15 A. Not that I'm aware of.

16 MS. OLLILA: Are you all set?

17 MR. SHEKETOFF: Yes.

18 REDIRECT EXAMINATION

19 BY MS. OLLILA:

20 Q. Christopher Ranfos was stopped -- strike that.  
21 That same day Christopher Ranfos asked if he could come  
22 and check out the heat, law enforcement saw him grab a  
23 bag from Koumas Koustas's motor vehicle, didn't they?

24 A. Yes.

25 MR. SHEKETOFF: Well, objection to that, your

1 Honor. Move to strike it unless there's personal  
2 knowledge.

3 MS. OLLILA: He opened the door, Judge.

4 MR. SHEKETOFF: Hearsay.

5 MS. OLLILA: Opened the door.

6 THE COURT: I believe you did open the door.  
7 Overruled.

8 Q. And didn't Christopher Ranfos deal marijuana  
9 that day to someone named John Horne? Didn't he?

10 MR. SHEKETOFF: Objection, same thing.

11 THE COURT: Same basis?

12 MR. SHEKETOFF: Personal knowledge.

13 THE COURT: All right. In your questions I  
14 think you could ask him how he knows so the jury can  
15 assess the weight.

16 Q. Do you know if someone by the name of John  
17 Horne was arrested that day?

18 A. Yes.

19 Q. Who was he arrested by?

20 A. New Hampshire State Police.

21 Q. What was found on him?

22 A. Marijuana.

23 Q. Before he was arrested, did he travel to  
24 someone's residence?

25 A. Yes.

1 Q. Whose residence did he travel to?

2 A. Christopher Ranfos.

3 Q. Before he traveled to Christopher Ranfos's  
4 residence, where did Christopher Ranfos go?

5 MR. SHEKETOFF: Same objection, your Honor. I  
6 know you think I opened the door, but I think this whole  
7 line of questioning is calling for stuff beyond his  
8 personal knowledge.

9 THE COURT: I think you could also limit it to  
10 a limited set of facts with respect to heat. But it's  
11 overruled. Go ahead.

12 MS. OLLILA: Okay. Sure.

13 Q. So before Christopher Ranfos -- excuse me,  
14 before John Horne got marijuana from Christopher Ranfos,  
15 was that the same day that Christopher Ranfos contacted  
16 Kosmas Koustas and said I want to come over and check  
17 out the heat.

18 A. Yes.

19 Q. Now, let's talk a little bit about Brandon  
20 Lachance because counsel seemed to suggest that it was  
21 Brandon Lachance who was the MDMA source of supply;  
22 correct?

23 A. Yes.

24 Q. But Brandon Lachance was a confidential  
25 informant in this case, wasn't he?

1 A. Yes.

2 MR. SHEKETOFF: Objection.

3 MS. OLLILA: He opened the door, Judge.

4 THE COURT: Can you approach?

5 AT SIDEBAR

6 THE COURT: I just want to make sure that with  
7 Brandon Lachance, essentially you're going to establish  
8 the basis on which Sergeant Norris is uncomfortable  
9 essentially not following up with the phone calls  
10 between Brandon Lachance and Kosmas Koustas on the day  
11 in the question.

12 MS. OLLILA: Right. Exactly.

13 THE COURT: Okay. So you're establishing that  
14 a confidential informant therefore -- you're  
15 establishing a foundation for his knowledge and  
16 understanding.

17 MS. OLLILA: Exactly.

18 THE COURT: What's your objection?

19 MR. SHEKETOFF: I have no idea where she's  
20 going with this, but does this make him credible, that  
21 he's a confidential informant? And when does he become  
22 a confidential informant? In December of 2013?

23 MS. OLLILA: I'm going to establish that.

24 THE COURT: I think she can now establish his  
25 understanding of Brandon Lachance, the fact that he's a

1 confidential informant. Perhaps you could move past  
2 that quickly, but I think you've opened the door to his  
3 knowledge and understanding of Brandon Lachance and why  
4 perhaps he would not lead to the inferences that you  
5 suggested in your cross.

6 MR. SHEKETOFF: Okay.

7 IN OPEN COURT

8 Q. Sergeant Norris, Brandon Lachance cooperated  
9 with law enforcement; correct?

10 A. Yes.

11 Q. And during the period of his cooperation, he  
12 wore a body wire for law enforcement; correct?

13 A. Yes.

14 Q. And when he wore a body wire, did he meet with  
15 Kosmas Koustas?

16 A. Yes.

17 Q. And when he met with Kosmas Koustas, did he  
18 purchase marijuana from Kosmas Koustas?

19 A. Yes.

20 MR. SHEKETOFF: Objection.

21 THE COURT: Overruled. Go ahead.

22 Q. Did he purchase marijuana from Kosmas Koustas?

23 A. Yes.

24 Q. Brandon Lachance, was he cooperating with law  
25 enforcement before law enforcement seized two pounds of

1 MDMA at Kosmas Koustas's residence?

2 A. Yes.

3 Q. Now, defense counsel also seemed to suggest  
4 that it was actually Kosmas Koustas who called the  
5 Massachusetts courier on December 6th. That wasn't so;  
6 correct? Wasn't it the Massachusetts courier who  
7 finally called Kosmas Koustas?

8 A. I'm sorry, I'd have to look at the records  
9 again.

10 MS. OLLILA: That's okay. I have nothing  
11 further, Judge.

12 THE COURT: Anything further, Attorney  
13 Sheketoff?

14 RECROSS-EXAMINATION

15 BY MR. SHEKETOFF:

16 Q. When did Brandon Lachance become a cooperating  
17 individual?

18 A. Sometime in January of 2014.

19 Q. So when we were talking about October 23rd of  
20 2013, he was not a cooperating individual?

21 A. Correct.

22 Q. He wasn't wearing a wire against anybody in  
23 October of 2013; correct?

24 A. Correct.

25 Q. And he became a cooperating individual because

1 he had been busted, for what?

2 A. Drug sales.

3 Q. What kind of drug sales?

4 A. Oxycodone.

5 Q. And he was presented with the choice of wiring  
6 up or going to jail on the oxycodone case; correct?

7 This is in January of 2014.

8 A. Yes.

9 MR. SHEKETOFF: Thank you.

10 MS. OLLILA: Nothing further.

11 THE COURT: All right. Sergeant Norris, you  
12 may return to your seat. It's close to a good time to  
13 break for lunch, but it depends on your next witness.  
14 If there's somebody we can get on and off we certainly  
15 could do that.

16 MS. OLLILA: I don't think the cross would be  
17 short though, Judge.

18 THE COURT: All right. Why don't we take our  
19 lunch break and then be back thereafter, probably just a  
20 little more than 30 minutes to give the attorneys time  
21 to grab something to eat. We'll be back around 1:00.

22 MS. OLLILA: Thank you, Judge.

23 (Luncheon recess at 12:25 p.m.)

24

25

1 C E R T I F I C A T E  
23 I, Diane M. Churas, do hereby certify that the  
4 foregoing transcript is a true and accurate  
5 transcription of the within proceedings, to the best of  
6 my knowledge, skill, ability and belief.7  
8 Submitted: 4/14/16

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**DIANE M. CHURAS, LCR, CM**  
LICENSED COURT REPORTER, NO. 16  
STATE OF NEW HAMPSHIRE

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